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A K
DISCOURSE

UPON THE
UNITING
Scotland with England:

CONTAINING
The General Advantage of such an UNION
to both Kingdoms.
The several Ways of Uniting Nations.
The Difference of Religion, Laws, and Nobility, &c. Adjusted by the Law of Nature, and the Practice of All Nations in such Cases.

With divers
ORIGINAL PAPERS
Deliver'd by the Commissioners of Both Nations to One another about an UNION in 1667.

----- *Antiquam exquirite matrem,
Hic domus (Hengisti) Cunctis dominabitur oris,
Et Nata natorum, & quæ nascentur ab illis. Virgil.*

L O N D O N,
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Dr Blachery Fairfaine
is the Author of this
Book. James Knapp

~~OF THE UNION OF THE TWO KINGDOMS OF SCOTLAND AND ENGLAND~~
~~IN THE REIGN OF CHARLES THE FIRST~~
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Commissioners of both Nations to
one another about an Union in
1667.*

Ad Scotos pro Scotis.

Proemium.

ENlargement of Dominion, and Enlarge-
 increase of Wealth, is as ment of
 much the aim of Confederate Power, the
 Cities and aspiring Kings, Business of
 all States.
 as the pursuit of Riches and Fame are
 Objects of the successive Care and ha-
 zardous Toil of private Men; for these
 the one expend even their Spirits and
 their Blood, for those the other scruple
 not to take up expensive Arms and wage
 destructive War : As if the Lust and
 Avarice of Singulars, when transferred
 into Societies, or planted in the Hearts
 of Kings, received redoubled strength;
 and publick Vices had publick Approbati-
 on. Thus Athens, Carthage, Rome
 grew in Treasure and in Rule; thus So-
 lostris, Ammon, Cæsar, spread their
 Empire over the known Earth, and their
 Fame to the Canopy of Heaven. So that
 B the

The Union of Scotland.

the Wise and Peaceable are under a necessitous choise of enlarging their Societies and Power, or quietly to receive Laws from those turbulent Nimrods; and high and mighty Cities. Since therefore what the Ambitious lust after, the Wise chuse; and the augmenting of Power is as much our Duty as our Inclination; by what ways and means it may be done, most to the Advantage and Honour of our Country, is worthy the Consideration of all that have a true sense of the one, or a due love for the other.

¶ Wealth &
Arms the
Standards
of Power.

The main Standards by which the Power of Nations is measured, and the chief Fountains of their Greatness and Fame, are Wealth and Arms: The one generally owing to the product of their Soil, or the Industry and Ingenuity of its Inhabitants; as their Success in the other, is to their Valour, their Conduct, or their Numbers: And this is as usually found to flourish in the Kingly Youth, and gay bravery of a State; as that in the more mature Age of it, is cultivated and secured by wholesome Laws, and well-manag'd Leagues of Commerce; till by Force of Reputation or Interest, they grow into such Confederacies, as may support

support them against Foreign Insults, and facilitate the pursuit of their Aim, whether it be of Wealth or Conquest.

Whether our Nation had its Origen from Irish Clanns, Hordes of Scythians, or our Kingdom was Founded by the more late Invaders of this Isle; Saxons who like the Greeks in their Trojan Expedition, were as many Sovereigns as Chief Commanders, and Kingdoms as Detachments: 'Tis certain, our Monarchy like that of our Neighbours in the South, sprang from a Heptarchy; and that we are as foreign to the Soil we now inhabit, as they; and that our Dominion is the Athievement of the Sword, and the Fruit of our Ancestors bloody Victories. Yet whether the Force they gave us, was too feeble to be continued, or being too irregularly great, like a Cadmean Race, they vented it on themselves, that either, or both, gave Opportunity to our Invading Neighbours to take firm Root, and grow into immoveable solidity; 'tis certain, for almost this thousand Years, we have made no considerable Acquisition on that side by our Arms; and either from contrary Inclination, or want of a Force at Sea; we

Our Kingdom a Conquest.

The Union of Scotland

scarce ever yet attempted it any where else; and what Victories we have had over them, have generally been in our own Defence; or tumultuary Incursions, rather than Conquest: contenting our selves with the Glory of appearing Brave, rather than aiming at the Fruit of it.

The Acquisition
of Wealth
never yet
in our
Power.

As for the pursuit of Wealth, that seems to have had hitherto but little of our Thoughts, and less of our Pains; so that either from the Barrenness of our Soil, the Sobriety of our People, content with little, or that they are Spirits too great to bow to Labour; Trade the Basis of it, has hitherto been generally neglected or despis'd amongst us, or at least, not to have been exercis'd beyond the use of Necessaries, and this too, accounted but a Mark of Vassalage: but Time has sufficiently convinc'd us of that Error, and now we as irregularly aim at aggrandizing Wealth, and emulating our Neighbours in Commerce; as before we did to excel them in the Glory of Arms, before we had Erected our selves into an uncontroverted Independence: But with much different Success,

cess ; for then, the many Victories we gain'd over them, sufficiently proclaiming our Renown, tho' they enlarged not our Territory ; but an Emulation in this Point, changes the Scene of Action into another Element, and engages us in a Discipline, neither we nor our Fathers ever knew ; and in the infancy of our Ambition, to contend with the greatest Naval Power that ever yet appear'd upon the Seas, for a Dominion, all the World seems to give them the Sovereignty of. So that what before was thought unconquerable Difficulty, will now be accounted Chimerical Vanity.

South England.

It is for them the many reforms we
gain of our state, justly the provision
ing our state, the the enlarged we
our territory, but an Englishman in this
Point, change the State of Affairs into
another Element, and engage us in a
Discipline, neither we nor our Father
ever knew; and in the history of our
Ambition, to contend with the strength
Navy Power that ever yet appeared up
on the Sea, for a Dominion, all the
World seems to give them the advantage
of. So that what before was thought
unconquerable Difficulty, will now be an
easy and certain Victory.

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DISCOURSE
UPON THE
UNITING
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Scotland with England.

C H A P. I.

A closer Union necessary.

SINCE Divine Providence and the Fortune of our Kings, has given them the bloodless Acquisition, and for this Hundred Years, the peaceable Possession of our Rival Crown; and united in some sort, that to ours, or ours to theirs, the augmenting our Strength, our Territory, or our Fame, must either be, by endeavouring a closer Union

Our helps
to an Uni-
on.

For a Sepa-
ration.

Union with them, and thereby partaking of their Wealth and Glory; or by seeking a more compleat separation from them, remove our selves out of the Shade of that Power, that at present seems to quench our Growth: In pursuit of the former, we have the assistance of the Royal Favour, and the propensity of the most discerning part among our selves, to answer the present Invitation of that Nation, who have hitherto despis'd or declin'd all Overtures that have been made of that nature to them: To facilitate our Accomplishment of the latter, we are furnish'd with the Hereditary Disposition of the Vassal-Vulgar, easy to receive the Impressions of Enmity to our Neighbour Kingdom, and as ready to anticipate that imaginary Success, their ambitious Chieftains should suggest to them, from the Breach now made in the Royal-Line by our Partners in Subjection, that seems to give us Opportunity of shewing our Resentment of the burthenfomeness of that unequal Union we have this last Century had with them; and at the same time, to make them sensible of the value of our Alliance, by making them apprehensive of the likelihood of losing it. But if we examine the grounds of their Hopes, and draw forth a Scheme of those Toils, Hazards, Miseries that the avoiding their Settlement would produce: On the one side, it would give such a prospect of Vanity, as no wise Man but must fore see; on the other, such a Scene of
Ruin

Ruine and Confusion, as there's no good Man but must deprecate. Can we soon forget the ghastly Wounds Popery so lately gave our Liberty, and over-look the Deformity of the yet remaining Scars? Can we so soon forget the last *High-land* Inundation, that o'er-spread the Land with lasting Tracks of spacious Desolation? Can we so soon forget our Distress, our Cries and dear-bought Safety; as to tamper with Faithless *France*, and think to Court her Monarch into that Fidelity, the Wrath of Heaven on perjured Vows, and the armed Force of injur'd *Europe*, could never yet confine him to? as to make a Popish Successor our choise, and level the Mounds betwixt us and Barbarity? as to defy those Storms and Seas, we were so lately Shipwrackt on, and tempt propitious Heaven to relinquish us to our implous Audacity? But if we could be so unmindful of our Safety, can we imagine our Neighbours should be so negligent of theirs, as to suffer us quietly to fix in the Island a petty Prince of *Savoy*, with a pretension to the whole; or to take from the more powerful Court of *France* a Vice-Roy, some Tool of that Prince's odious Ambition. To obviate such Mischief, did not *England's* Sixth *Edward*, make on us that formidable Invasion that shook our very State? For this Cause, did not their *Elizabeth* Embroil us, Captivate and Behead our Sovereign? And are they now less to be fear'd, or we more? But as such Pro-

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ceedings

*The mischief
of a popish
Successor of
France or
Savoy.*

ceedings would without doubt afford sufficient Matter for Division amongst ourselves; so would they no question, furnish as much for a Rupture with them, without necessitating 'em to trump up the Title their Kings now hold *Jamaica* by; and that they formerly had to *Dunkirk*; tho' the disproportion of the Revenue of our Country to the Charge of keeping Garrisons in it, sufficient to awe a People so Warlike, and Colonize a Land of so great extent as ours, may give us ground to think they never will.

Of Exclud-
ing the pre-
sent Royal
Line.

But if any such Phaeton should be found amongst us, so prodigal of his own Good and Happiness, and so adventurous of ours, as to aim at the Success of *Gustavus Erickson*, the House of *Nassaw*, or that of *Braganza*; and put us upon the excluding the Family of *Hanover*, or Disputing the *Stuartian-Line*; 'tis to be hop'd, the number of those he would draw into his Fortune, would not be enough to endanger the Ruin of his Country; and whil'st we have an honourable Union propos'd, to run us into the hazard of having such an one as the *Gibeonites* had with *Israel*.

The Revolt
of Sweden,
&c.

The Revolt of *Sweden* from the *Northern Union*, was in an Elective Monarchy, compounded of three Elective Kingdoms; where the Cruelty of King *Christian*, their Sovereign, had made him so universally hated thro' all his Dominions, that in despair of the help of one part, to quell the Rebellion of the other, he quitted the whole.

with England.

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whole. Besides, there was no such considerable disproportion in the joint Power of *Denmark* and *Norway*, to that of *Sweden*; as to expect they should enforce an Union so imperfect as theirs at best was.

As for that of *Holland* and *Portugal* from the mighty Empire of *Spain*; thole were one while the Coalition was so loose, as not to have stood the brunt of one Attempt to dissolve it; the Insolence of *Spain* at that time was intolerable; the Resolution unanimous and desperate, the Assistance of *England* and *France*, open and powerful; and the Contemporary Revolt of *Catalonia*, *Naples*, and the Expulsion of the *Moors*, was as favourable to the latter, as the kind Offices of all *Europe*, jealous of the *Spanish* Greatness, was of continual use to the former: So that the Resentment of all, was of use to all.

C H A P. II.

Our Inability to Separate.

BUT the Union we have already had, has either so far weaken'd us, or increas'd *England's* Strength, of by length of time, is so insensibly grown into our Constitution, that now we seem so firmly incast into their Stock, that the vital Vi-

gour of our Government knows no other Channels; and frequent Experience has assured us of our Inability to transplant it: Did not we notwithstanding our utmost Efforts, assisted by *Holland*, and the contemporary Revolt of *Ireland*, follow them from the Monarchy to a Republick, and with them return to the Monarchy again? Whilst their Religion and Liberty was in danger, with us, was not the one subdu'd and the other precarious? And did not we with them recover each, with them discard our Prince, and dissolve the Government? And even then when we seem'd to choose a King, was not their Choise ours? In vain we talk of *Bannockbourn*, and boast the *Bruces* successful Arms; for 'tis certain, they are no ways our inferiours in Valour, and that in Wealth and Foreign Alliances so far our Superiours, that should we pawn the whole Kingdom, we could scarce Bribe to our Interest a *German* Prince, if they thought it worth while to divert him from it.

But to bring our Power to an Estimate; we were said to be One hundred thousand in *Flodden-field*; which if true, was rather an Argument of the universal Obedience given to a Commission of Array, and the Populousness of our Country, rather than the Power; for the Success shews, it was but as tumultuary an Army as that at *Boithwell-brigg*, and as little to be feared; and utterly unfit for the Dilatory way of waging War, us'd among the Modern: For which

which Reasons, and the abolishing of Military Tenure, our Numbers have been since that, much less, tho' our Armies much better; such as were those under *Lesley, Leven*, and the two Dukes of *Hamilton*; and yet neither of these were above Twenty thousand; and the Assistance the Parliamentarians gave the one, and the Royalists in *England* the other, was so considerable, that what share we had in the raising, or maintaining them, is difficult to find; and if we may guess by the late Adventure at *Darien*, which seem'd universal enough, it would not mount to that Number; and since their Miscarriage is like to be less. And how we by the Valour of a comparative few, can oppose all the Loyal in the Land, supported by our Neighbours now in the height of their Wealth and Martial Discipline; and without either Money or Credit, can Erect a new State, and Form such Alliances as must put all *Europe* upon new Measures, is beyond the reach of humane fore-sight.

As for the sudden and unforeseen Growth of mountanous and unfruitful *Macedon*, the stroling *Vandals*, or wild *Saracens*, with those other Phenixes of Empire, born out of one anothers Ashes, and of whom the labouring Earth could bear but one at a time; they instill but groundless Projects of unattainable Ends; for whatever Grandeur the Race of our Kings may attain to, in all humane probability, our Nation hath long e'er now had their Ne-

plars

*The sudden
Growth of
Empire no
Argument
to the con-
trary.*

plus ultra; and that at the time of our Union with *England*, we either seem'd so aged, as to need another State to rest upon, or so wantonly ripe to be wedded, that had not we fallen into their Arms, we had into those of *France*. But were our Comet or Meteor, yet to appear, the difficult Acquisition of Wealth, the main basis of Modern War, that furnishes the chargeable Implements of Death, the necessary Provision of Camps, and the expensive Fortifying of Garrisons, would undoubtedly make it but of small Continuance; whilst the Trade of the World remained in the Hands of those mighty Nations, who are now possessed of it, and who are wise enough to know their Advantage, and powerful enough to keep it to themselves: Or how we could repair these Defects in our selves by Foreign Alliances is unaccountable, whilst our Neighbours are, and in all likelihood, will continue Masters of the Sea, as we have seen them hitherto do, against the utmost Attempts of that Frye of Seamen *Holland*, and the formidable Ambition of *France*, who in the height of all her rapacious Achievements, and luxurious Glory, never yet could return their Invasions, or scarce so much as touch their Soil.

C H A P. III.

An Union of general Advantage to both Kingdoms, and what has hitherto been the hindrance of it.

THat a closer Union is of General Advantage to the whole Island, and that on it our Security, Welfare, and Greatness, intirely depends, is of such appearant truth, that it would surprize any one, that was a Stranger to that Imaginary Honour, that fatal Emulation, that has hitherto been promoted among us, to think that for this Hundred Years we should have had the same Sovereignty, the same Leagues, and Confederacies, and War and Peace at the same time, and never yet could be ruled by the same Laws, or absolutely pursue the same Interest, till once for a little time, and then forc'd into it too, and that Union to last, no longer than that Violence continued: This if we trace the mischeif shall we find the Fountain of all our Evil; hence that Envy on one side, that has produc'd that distrust on the other, that our grow'th should be reckoned their Diminution, and the enlargement of their Glory, the abatement of ours, and that instead of each reaping the advantage

tage of an Additional Strength, we have been to each one another a burden: Hence that groundless Vanity in us, to make our selves greater then we are, and that undeserved Contempt in them that would render us less than we are; and hence that Reciprocal prejudice on either side, that will suffer neither to hearken to the most Important Arguments of Reason and Interest. To this End, with what Animosity has the trival Cause of our Antiquity been supported? With what eagerness have the Romantick Fables of Monkish times been defended? With what tenacity have we asserted our Traditions, and contended for unproduceable Records and Histories of more antient date then Letters, and Computations of time before a Cronological Settlement of it; and all this so Religiously believed among us, as to have it aggravated to a Crim of Lese-Majesty to oppose it; and all this to deduce an honourable Precedency, or at least an Independancy: thò after all the Catalogue of our Kings is as disputable at least as the *Egyptians* Dynastys, and without doubt, there is as much reason to believe it of ours as of theirs that they reigned not at all in one place; and as for our Homage we have the Negative to Maintain against unquestionable Records, Satisfactory to all the World, except our selves, and so *Puffendorf* the *Sweed*, that Oracle of the Law of Nature and Nations takes it. Then how we come by the true old *English* Language, their Laws, their Distributions in Shires

Shires, Counties, or Earldoms, Stewardships and Baylywicks, the Names of Places with their common terminations of *Ham, Wyck, Burgh, Ness, Ton, Dale, &c.* and those too from *Barwick* to *Cathness*: The same form of antient buildings and the generallity of our Surnames taken from these places or from *Saxon* Offices; as *Steward, Bayly, Constable, Forrester &c.* and how we came by that noted Germanick Constitution, Parliamentary Government, which as *Grotius*, says, *Nusquam invenitur nisi ubi Germani sedes posuere*, nay, would a Man, be curious to know what *England* was, he will in great Measure find it, in observing what *Scotland* is: How all this should come to pass, and we had no more to do with them nor they with us, then we pretend is unaccountable. And although we are Originally so near a-kin, that perhaps the greatest part among us are extracted, from the *English Saxon* Race, (the ancient Inhabitants of the Banks of the *Elbe*, the present Territory of *Hannover*,) yet what with the frivolous disputes upheld by Men of Learning, and the ridiculous Stories currant among the Vulgar, detracting from the Fame of our Neighbours, or that the Injury they have done us is unpardonable, or that the weakest side has generally the most Malice, such a lasting prejudice is fixed among us as is far beyond what ever is observed between *Spaniard* and *French*, or them and *English*, between *Dane* and *Sweed*, *Dutch* and *Spaniard*,

ard, or them and *Portugese*, and perhaps the coming of Episcopacy from our Auld Enemies of *England*, is none of the least causes of the Prejudice of the Vulgar, to it.

The 1st Step
must be to
quit all e-
mulation.

The first step therefore we make to an Union, must be to quiet all pretensions to Emulation, and since King *James* the VI. the first of great *Britain*, thought fit in the first Parliament he held at *Westminster*, to call his Accession a Re-union, we should rest on that Determination, and make it punishable to start any farther Disputes about it; for 'tis not to be imagin'd, the *English* should admit us into their Councils, and communicate to us their wealthy Commerce, whilst they should think that when we are grown rich, or can spy any fault in their Constitution we shall fly in their Faces, and sting the Breast that gave us warmth and Vigour. The *Romans* that were as free of their Naturalization as any People, yet admitted not the *Italians* to their *Jus Civitatis* (the Legislature) for a long time after the Conquest of them, and till they had given them sufficient proof of their Fidelity and Affection to their State whilst they used them as Allies.

2^d Step to
obliterate
their preju-
dice.

And then to wear out that inherent prejudice so common among us, perhaps encouragement given to our Youth, by Scholarships and Fellowships appropriated to them in the Universities of *England*, like the design of *Baliol* Colledge in *Oxford*, either by transplanting ours thither that

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at present are but of small use, or erecting new Foundations there, but especially to make there additional Improvements for the Study of the Civil-Law, and experimental Philosophy, which 'tis very observable, tho' it began in *England* is not taught in their Universities, in *Cambridg* at Least; these might be of great means to carry them thither, where among the open-hearted Honesty of the Youth, in these places they may forget their home-bred Prejudice, and by seeing themselves capable of such splendid Preferments, neglect the thoughts of making their Fortunes beyond the Sea; and be diverted from seeking their Education abroad, when they can have a much better at home; and that the Travels they make into Forreign Countrys, may be on-ly Visits, and their stay not long enough to re us back in such alien Principles as 'tis apparent they do.

Then that a reciprocal Communication, *A reciprocal Communication of Places of Honour and Profit in both Kingdoms, might answer the Colonys of the Romans and the design of the Scotch, Irish and Switzguards in France.* And that a restraint be put upon our Men's so frequent passing into Foreign Service, especially *France and Holland*, or whatsoever Nation we are like to have contests with, for hereby they not only alienate their affections, but are very often actually engaged in War against their Country, and 'tis certain there is no greater Tye to Friendship, then to fight the same Battels, and be engaged in

the same Quarrels. When therefore we can obliterate our Prejudice, eradicate the various Branchings of its Root, and be brought to a disposition of being one People; we may expect success in our Attempt, to be Incorporated with them which I don't see how we can before.

C H A P. IV.

Of the several kinds of uniting different Nations.

THE Uniting different Nations into one is either by open Force as that of the *Romans*, beating the World into good manners, or that of the *Goths* and *Vandals* beating it out of 'em, or more mildly as that of the *Peruvians*, not using Violence till they had demonstrated to their Neighbours, the odiousness of Barbarity and advantages of their Society, and till they had utterly rejected, the happiness they proffered 'em of living under their Laws: or else 'tis done by Common Consent, and that adapted only for War, the State remaining separate, and that too either an Alliance, for a Time against a Common Enemy, as that of *Greece* against the two *Philips* of *Macedon*; that of *Italy* and the Empire against the State of *Venice*, and the Modern

Modern one against *France*; or else more constant, as that of the *Roman* Allies, or the League yet in being between *France* and the *Switzers*; or else its a perpetual Confederacy for War and Peace among different Independent States, and that either among Commonwealths, as the Confederate Cities of *Achaia*, the United Provinces of the *Netherlands* and the Cantons of *Switzerland*, or else, between several Kingdoms, and those either Elective, agreeing in the Choise of the same King, as the Union between the Three *Northern* Crowns, and the Modern one of *Poland* and *Lithuania*, tho' more restrictive; or else Hereditary, the Race of their Kings meeting in one Line; and such Incorporation is either imperfect (the several States continuig intire and separate, as of late those of *Spain*) or else more compleat, as those of *France*, permitting to her several Principalities, their ancient Customs, and by Laws a *parte ante*; but confounding their State and Royalty a *parte post*, in one uncontroulable Super-intendency.

Conquest is usually as burthensome as dishonourable to the Conquered, and seldom of longer continuance than the Force that made it. Temporal Alliances in War cease of course upon a Peace: and the more lasting ones of populous Monyless Nations, assisting their more potent Allies with mercenary Men, is a fruitless expence of the precious Blood of one Nation to aggrandize another; and that fails upon their falling into

*The Defects
of these U-
nions.*

into the peaceable Arts of Trade, and employing their Numbers in the more substantial Acquisition of Riches by their Industry than uncertain Rapine. Commonwealths composed of a Confederacy of independent Cities, seldom last longer than the Affairs that draw them into a common Defence, for in such an equality without a Supreme Coercive Power, is wholly unfit for Offensive Action. So we see the *Switzers* in height of their Martial Glory, in the time of *Lewis XI. of France*, when they were a Terror to all round them, and the Admiration of all the World, never aimed at any thing farther than their own Defence. Unions in Elective Kingdoms, as that of the *North*, are yet less durable, requiring a long time to bring to perfection, as that of *Lithuania* and *Poland* from the time of *Jagello* to *Sigismund Augustus*, near Twenty Years; for the Election of every new King is a new Union, and the maintaining separate Estates under one Royalty, as in *Spain*, is so loose a Coalition, that we have seen *Arragon* and *Catalonia* Attempt what *Portugal* effected; whilst *France* has continued firm and intire without the Revolt of any particular State, and those Revolts that have been, were general, and the effect of the Tyranny of their Kings, or their Nobles, or their more cruel Religion.

C H A P. V.

*What sort of Union best for the
Scotch to insist upon.*

THO' Subjugation is detestable to all Mankind that can prevent it, yet it is not always to be reckoned a Misfortune; most of the *Roman* Conquests were not: and *Greece* in all likelihood had made as great a Figure in the World as *Italy*, if she had happen'd to have been conquered by one of her Cities, as that was; and the improvement we made in Agriculture, Building, Trade and Commerce that little time we were under the *English* Dominion; and considering, that since our Re-instatement we have been to the *English*, what before we were continually to the *French*, Auxiliaries in their Wars; or lessen'd in Power, as *Norway* by *Denmark*, we have but little cause to repent it; and the disproportionate increase of the Wealth and Trade of *Ireland*, is sufficient Argument of the value of the Priviledges they enjoy by living under the *English* Laws, notwithstanding their Subjection to them; tho' tis no dishonour to submit where Resistance is impracticable, or at least to decline Contention when the Success will be a disadvantage; yet that is not our Case, for here is no Subjection insisted on farther then our own Choise. And tho' it be in our Power to claim an equality in this Union, like that of Confederate Independent Cities, and maintaining our Honour in the enjoyment

Reasons for
not insisting
on an equal-
ity.

ment of our separate State and Priviledges, as in *Spain*, and appropriating all Offices Civil and Military to our own Country as in the *Northern Union*, yet we have undeniable Arguments not to do it. As its not safe for them to communicate their Priviledges upon so slight an Union; so we see its customary in such Cases to make separate Laws of Trade exclusive of each other, as is practis'd among the several Kingdoms of *Spain*, and the chief pretence we know to the Revolt of *Portugal*, was the *Spaniards* suffering their *East-India* Trade not to be kept so intirely to that Kingdom as they expected; and this making Laws of Commerce exclusive of each other, we see the usual practise of the united Provinces of the *Neiberlands* and the Cantons of *Switzerland*, and all such States as are a Congeries of Equals: Besides, unless we are govern'd by the same Laws, have the same Prohibitions and Imposts, and the same regulations of Trade as *Ireland* has, it can't be expected we should be admitted to a Community of Commerce; for from such Regulations the State is not only in great measure upheld; but Monopolies are hindred, the difficulties great Undertakings lye under compensated, and by an equal distribution of the Channels of Traffick, the Burden is made as common as the Profit; so that if we be admitted to Trade to their Plantations enjoy the Benefit of their Commercial Leagues, of as dear Acquisition as Territory, we must of necessity be ruled by the same Laws, or else be go-

verne

vern'd as a Province under their Direction, or we must imagine, them so stupid as to give us all these Advantages, and at the same time suffer us to Export (as we have often done their Wool) or Import what they Prohibit and to have the Merchandize they Tax, Custom free, and support with their Arms and Treasure those Quarrels this unequal Gain would involve our Sovereign in, and at the same time, all this to be done to a numerous People that pretend to an Emulation.

CH A P. VI.

The necessity of being Govern'd by the same Laws.

IF therefore we would have an Union of solid Advantage to our selves, and safe and lasting to them, it must be by being Govern'd by the same Laws: So that either their Laws must bind us as they do the *Irish*, or else by mixing the Legislative Parliamentary Power, give our Consent to the Laws that shall oblige us, by the former, we may thro' their ignorance of our Constitution, be subjected to Laws disagreeable to it; for if *Ireland* that had a preliminary modelling to the *Poyning's Act* for several Hundred Years, and whose Government had all that while been in the Hands of the *English* that carry'd over their own Constitution in their Memories, have felt that Inconveniency, much more must we

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that

that have so long had our separate, and sometimes contradictory Laws, customary Humility, and yet lasting Prejudice, that all the Attempts that have been made this last Century could never obliterate. But if we are added to the Legislative Power, and obey no Laws but those we give our consent to, our Union will be as Honourable as Advantagious.

*The number
to be sent to
Parliament*

But since Parliamentary Proceedings are by vote, the Number we are admitted in, is of as great importance as difficulty to adjust, if the number of Members we send be equal to theirs, our Coalition will be no better than that of Confederate Independent Cities, prepared for Separation when private Animosities shall disturb the Peace, or luxurious Plenty prompt the Ambitious to endeavour it. Besides, if this Equality be made by increasing our Numbers to theirs, we should make a Composition too great for Council especially, if such an Union should hereafter be set on foot for Ireland. If they be lessend to ours we cut off half the Land from their inestimable Priviledge; or if we should be lessend, all Three Nations, as 1634 when the whole House made up Four hundred, Twenty from Scotland, as many from Ireland, the remainder from England and Wales, their Burroughs sending generally but one Burgess, and the Counties sometimes six or seven Knights; yet no doubt but they would, as they did then, keep themselves at the Head of the Union: For altho' the general Now Condition of all may establish such an Equality in the beginning

ginnings of Commonwealths, as that each Member should have but a single Vote in their general Assemblies; yet no question but if the Union of the Seven Provinces was now to be made a-new, but that *Amsterdam*, that has of late assum'd so much of the Ballance on her side, would fix herself at the Head of the Union, as *Rome*, *Athens* and *Sparta* always did with the States they Incorporated with. But whether it was from the favour of the *Western* Kings to their Country-men when they united the Heptarchy, or that they then by design'd to bring the distant *Cornwallians* to a greater familiarity with their Chief City, and by that inure them to their Customs? 'tis certain, at present the unequal distribution of the Priviledge of Electing Members to their Parliament, is none of the least blemishes in their Constitution: But whereas heretofore the chief Occasion of Calling them was for Council, 'tis now to give a general Consent to a general Tax; and as the Methods of Taxing are usually such as equally affect all, what proportion we bear to a general Tax seems the fittest Model for adjusting the Number we should send to a general Parliament; but whereas we are like to be out-numbered that way, and 'tis natural to shift the Burden from our Shoulders without regarding the weight we thereby throw upon anothers; either we must have such a Provision, That nothing shall pass into an Act that has our general Opposition; like the Power the *Tribunes* had in the Senate of *Rome*, by which

which the Populacy were secured from the Oppression of the *Patricians*; or depend upon the Royal Favour not to see us wronged in that Point.

C H A P. VII.

Of a Reconcilement of the different Religion of both Nations.

BUT if the Number of our Countrymen should be thought so many added to a Faction among themselves that may endanger their Religion, and consequently their present Constitution; without doubt, it will be oppos'd by all that have a Care for the one, or a right Sense of the Confusion such an Alteration would make in the other: For altho' there is no necessity a Government should be a Hierarchy like that of the *Jews*, or that Ecclesiasticks should bear as much Sway here as the Sacrificers did among the *Egyptians* and *Ethiopians*, where their Power was almost as great as that of their Kings, and sometimes greater; yet it is certain, Religion is so interwoven with Government, especially since the fall of Heathenism, that was as little acquainted with Schism, as the effects of it, and now we are Taught, That our Happiness in the other World intirely depends upon it, and are Harangued upon our Duty, twice a Week, and *Mahometans* oftner: The Alteration of the National

tional Church cannot be done without endangering the State. Of this *Mahometanism* as well as *Christianity* furnishes us with sufficient Instances. Thus the Followers of *Haly* in *Persia*, the *Xeriffs* in *Morocco*, and *Aurengzebe* in *India* fixed themselves upon the Throne of those Kingdoms: From hence the Commotions of *Germany*, *France*, the *Netherlands*, and of fatal Experience our own at Home had their rise or main support; for this Reason, were the *Christians* Massacred in *Japan*, and are now oppos'd when they dare own their Principle in *China*; and perhaps the Ridiculing the *Roman* Religion as it was in *Lucian's* Dialogues was, none of the least causes of the declension of their Honour and Virtue, and the subsequent Fall of their Empire. Then since a change in Religion is so dangerous, the Question is, Whether our Conformity to them is not as certain Ruin to ourselves, as their Conformity to us will be to them? Experience indeed, has taught both the reciprocal burthenfomness of each others Religion, and that when they had ours, or we had theirs, each were forced to return to the Center we were so violently driven from. Yet the Danger is not equal on both sides; for in such Case we may rest upon them till the Course of our Government find agreeable and lasting Channels, if we could be brought to such a Temper as not to oppose Episcopacy with a Violence and Tenacity beyond all Sense and Reason; but if we bring them into Confusion our State could be but a Reed of Sup-

We may better change our Church Government than the English.

port

The Union of Scotland

port for them ; so that they must of necessity drive whither the violence of the Torrent carryed them. Besides, if this Union be effected, our Kingdom is dissolv'd and our Government new of course.

Altho' the King's Supremacy is secured by special Act of Parliament in the 8th of *James* the VI. yet in force, and the King's Commissioner in the General Assembly has in some sort brought the Kirk to the *Dutch* way of being subordinate to the Civil Power ; yet it is certain, this is done with so much reluctancy and 'tis so disagreeable to the known Principles of the *Presbytery*, that of its own nature it is wholly inconsistent with the Monarchy we all pretend to uphold, and as dangerous to the Supremacy, as Popery it self. Of this King *James* VI. was so sensible, who had Learning enough to understand the Dispute, and by being bred up in it had Opportunity enough to know the Practice of it, when he came to maturity of Age and had seen the necessity of Episcopacy in Monarchy, cleared of his home-bred Prejudice, and out of the reach of that tumultuary murdering Court that beforeawed him, from that time forward always endeavoured the introducing of it into *Scotland*.

But to deviate on this material Subject that has caused so much disturbance among our selves, and has rendred us so troublesome to our Neighbours, the Heathens, who had as much Wit and Sense as any now a-days, and were as strict in the practice of Vertue, tho' it proceeded not

it may be from the same Principles of Rewards and Punishments hereafter; but from the Honour and Benefit that it did transfer to Society, thought fit to make their Kings *Pontifices Maximi & Episcopi*, not that they officiated at their Sacrifices any more than Christian Princes do at their Altars, but that the Superintendency of those that did was placed in them; and altho' their Religious Worship consisted in Sacrifices and Ceremonies that were rather Feasts and Sports than Contemplations of Divine Things; yet these were the Objects of their Veneration, and the manner of the Adoration Mankind then pay'd to the Deity. Since therefore the Doctrine of Christianity has nothing in it repugnant to the Law of Nature, or destructive of the Civil Power, that it so often inculcates Obedience too; What should be the Reason Kings can't have the same Supremacy in Religious Matters they had then, when theirs and the Religion of the Country is become the same: 'Tis true indeed, in the Rise of Christianity, the Christians (as no Society can subsist without Order and Government) had theirs separated from the Civil Power, and for that Reason, met with that Opposition they did, at Rome; but this was while the Government was Heathen: Yet where the People and the Sovereign have the same Religion, the Case is quite different, and they are under no Necessity of making thereby the Government a Body with two Heads, or much less when the Prince turns Christian he should thereupon loose his Regal Dignity

ty, and as Puffendorf says, Because in the Primitive Times, either before the Conversion of Magistrates, or after upon his neglect of Duty the Christians Constituted their own Ministers, it is a very bad Inference that therefore the People have an Original Right to Elect theirs; and tho' it is not fit a Minister be obtruded upon an Assembly against their Will, if they have a reasonable Exception against him; yet the People may as well claim the disposal of all Offices in the State, as an absolute Authority to Constitute so important an one as a Parochial Minister. Such sort of popular Government in the Church, seems wholly adapted to that mutuality Government was then in the State at the time of its being introduced among us, and not at all agreeable to our ancient, or our present Constitution. If it be any material Objection against Episcopacy, That Men of mean Birth are thereby capable of being ennobled by their Learning, it must without doubt be the same against Presbytery; for can Dignity be separated from such Authority as we give it, of subjecting all to the inspection of the Elders; nay, that Kings and Princes should not be exempt from the Censures of it. Besides, had not Martial Rome her *Dollarum, Hædæra præmia Frontium*; and personal Desert was always accounted among them above Descent, and Virtue the greatest Merit —

Hor Od. 1.

Stemmata quid facium? Quid prodest,

Pontice longo

Sanguine censceri, pictosq; ostendere Vultus

Majorum? — Nobilitas sola est atque;

unica Virtus. Juv. Sat. 8.

If

If the Order of Episcopacy be consistent with the Protestant Religion, as we see it is, Why are not Bishops as much entitled to their Temporalities as our Nobility are to their Hereditary Offices, whose Grants are not more Authentick, tho' without doubt much more pernicious to the Government : But after all, a Bishop with us, is little better than a President of a Classcal Assembly, unless that for his Male administration he is accountable only to the King, the Head of an Episcopal Church. Therefore the vast Prejudice of the Vulgar against it, and the Care of the Greater not to favour it, seems rather to proceed from a nice Caution not to admit any thing among us that may have the least appearance of a Dependency on *England*, and to throw off the Custom of our Ancestors, of taking our Model of Religion from thence, as we have that of the Form of our Laws, the rather than any real Objection we have against it. Yet notwithstanding our unwillingness to acknowledge it, It is certain, *Malcolm Kenmore* with the *English* Law introduced their Episcopacy, and when he found out all the Land divided at the same time into Diocesses, and from that time to 1470 the Arch-Bishop of *York* continued Metropolitan of our Kingdom : And notwithstanding the Settlement *Pallidius* made of Christianity here, that has occasion'd such a Writing War; 'tis certain, the *High landers*, the true ancient *Scots* have not had the Bible in their own Language till the late Translation of it at the Charge of Mr. *Boyle* and other *English* Gentlemen ; and if we have any Liturgy,

turgy, as it is fit we should, it is the *English*; and whatever Church Government we have had besides theirs, is so foreign to our Constitution, that it could never yet be brought to a stated and lasting Regularity; of this the late Indulgence to the Presbytery has given such experimental Proofs, more convincing than Punishment or Precept, that it may now well be made a Question, Whether the Land is not now as generally inclinable to Episcopacy, as before it was pretended to be to Presbytery, or at least, if it may not be worth while to put it to a Tryal.

Take we then the *Turkish* Argument, of the prosperity of their Arms and State under their Worship, as made use of before them by the *Jews* and *Romans*, and we shall find it but of little use, or rather an Objection. The *Romans* altho' sufficiently convinc'd of the Unreasonableness of Idolatry; yet maintain'd the continuance of it, forasmuch as to the Guardianship and Benediction of those Gods they own'd the establishment and increase of their Empire, for it was not as *Tully* said, *That they excelled the Greeks in Arts, the Carthaginians in Cunning, the Gauls in Strength, the Spaniards in Numbers, or the Italians in Wisdom, that they had allotted to them the Command of the World; but that they were more religiously devout in the Worship of their Gods, and in Obedience to their Commandments then the rest of Mankind.* And this Argument we find the *Jews* use for the Truth of their Religion, whose Fathers told them of Old the mighty Things that were done in their Days, and in the old time before them by

by the God of *Abraham*, the God of *Isaac* and the God of *Jacob*, who brought them out of the Land of *Egypt*, out of the House of Bondage; and gave them the possession of a Land flowing with Milk and Honey, and slew mighty Kings for their sakes. But what hath our Idol done for us? Truly that for which a *Chinese* would have broken his into a thousand pieces; it was brought forth like a Clap of Thunder, rending the State into Confusion, scattering thro' the Land, the Blood of our slaughtered Nobles, and frightening from the Throne and Kingdom the ancient Race of our Kings; since which, though the Scepter has not departed from us, we have had as little of the Royal Presence as we have had of its acknowledged Supremacy; and the small and uneasy stay our Princes have made with us, has given a fatal proof of the little hopes to expect their Residence more among us, Since our *Shiloh* came. 'Tis to the *Presbyterian* Administration we owe the undertaking that dishonourable mercenary War against our Sovereign, and to them we owe that as disgraceful Conclusion of it, that soil'd all the Martial Glory of our Ancestors, and brought upon us a Subjection more ignominious than the *Furca Caudin* was to *Rome*; for they delivered up the Authors of their cursed Ignomy; but we espouse their Cause.

For the same Reason may we expect it should be opposed by our Neighbours, if we consider how the religious Learning King *James VI.* carried from hence into *England*, diverted the martial Temper, and steady Poli-

ticks of Queen *Elizabeth's* Reign into pernicious Disputes, fatal Seeds of the ensuing Civil War, and quench'd the growth of that great Nation that had establish'd themselves in the Empire of the Sea, and seem'd to hold the Ballance of the Powers of *Europe*. But when they took our popular Religion, as the Parliamentarians did, they were well nigh reduc'd to Anarchy.

But since the Government of the Church is the Dispute; Why need we that have no share in it, or at least ought not to have, trouble our selves so much about it, unless we are all to turn Levites, and make Religion our only Business, *And live to Day* (as they say) *as if we were to dye to Morrow*. Can't we be Pious and Verruous without having to do in the Administration of Holy Things? Or ruling those that have? Or why these Zealots in the Cause can't be content with a Toleration I can't see. Or that the being of *Presbytery* must needs infer the destruction of all that is Episcopall and that this their Tyranny must last, altho the Kingdom be dissolv'd.

As for the Union of the *Switzers* in different Religion, their State is but a perpetual Confederacy of Independent Governments and not such an Incorporation as our Affairs require; neither is the Case of *Guernsey* and *Fersey* enjoying their *Calvinism* under the *English* Constitution, parallel to ours; for they are no Members of Parliament. If therefore an Union with *England* be not of greater Importance than the humouring the Hot-headed Improvident *Kirk*, and we can make the Abjurin

jur^{ing} *Presbytery* the Test of our Admission into their Senate, we must of necessity diminish so much of our Honour as we give the *Kirk* of Devotion to its Interest, and for their sakes and acquitting the Opportunity of enriching our selves by Commerce, be content to be ruled as a Province, or promote such an Union for *Ireland*; that an equal Number taken from thence, a Country generally no great admirers of *Presbytery*, may be reckon'd a Ballance to us.

Since the Legislature is tripartite and a Parliament a Composition of two Houses the Lower a Collection of such distinguishing Merit as gives its Members as much Rank above the People they represent, as the Upper-House above them; the Lords nevertheless are such a subordinate Genus of Royalty, as is as much inferior to Kingly Dignity, as the People are to the Lower-House, or that of the Commons, to this of the Nobles; so that each must of necessity be modell'd in an answerable Proportion, and what Regulations are made in one, must consequently be made in both. But that the excellency and desert of Things may clearly appear, and that we may infer no Regulations but what shall procede from stated Principles, deduced either from their own Nature, the common Consent of Mankind, or the practice of the most and wisest Nations, we shall examine this Subject as all others from their origine, to their decay, and entirely resign our selves up to the drift of Reason, and approved Presidents, in all the Alterations we suggest

C H A P. VIII.

*The Power and Number of Nobility
to be retrench'd.**Vid Carr's
Travels.*

Nobility, uncommon Clay in Republicks, is a Constellation of all that is great and deserving in the State. In Kingdoms 'tis the radiant Glory from the Throne, dispers'd in undazzling lustre thro' all the parts of Empire. And altho' in the first Men are usually ennobled for their Wealth, as in *Tyre*, where their Merchants were Princes; and as in *Amsterdam* where it was thought a lessening to Burgo-Master *Valkenier*, to pay the first Visit to so great a Prince as the Duke of *York*; or for Council, as were the *Patres Conscripti* at *Rome*, of such venerable Gravity, as their Historian describes their Senatours of at the *Gauls* entering their City; and that in the latter such Advancements have proceeded from distinguishing Valour, as that the *Gothick* Captains received from their Kings; yet we find Desert in Valour, Wealth and Arms the common foundations of Honour in each of them; and that the Magi were in as great esteem in the Kingdom of *Persia*, as Valour was at *Athens*, *Sparta* or *Carthage*; or Wealth at *Rome*, after the *Roscian-Law*. And either that *Fortes creantur fortibus & bonis*; and that Wisdom and Courage are as inheritable as Wealth; and that by Riches and Education in a Court, Mankind may be fitted for

for the Impressions of all that is Great; or that Kings by communicating Branches of their Royalty to the most potent in their Country, did thereby engage them in the Defence of it as of their own Property, have generally made the Honours they imparted as successive as their own.

Yet as nothing mortal is exempt from corruption so have we frequently seen splendid nobility degenerate into an opaque body, eclipsing the lustre of the Throne, intercepting its benign influence from the People, and like the branches of the arched *Indian Fig* or *American Mangrove*, tending to soil gave root to the stock till they became as many Trees as Bows. Thus the *Satrapa* in the *East* by degrees erects their Provinces into Kingdoms, and their Kingdoms into Empires, viciously assuming to themselves the power they did but represent, and subverting the government, they ought to have maintained, which remarkable defect in the *Assyrian* Government, *Cyrus* that had made use of it, was so sensible that from the time of his advancement to the Imperial Dignity, he continually abridged the Nobles in their Power. And thus from the benevolence of the ancient *Gothick* Kings, and the use their nobility made of it, we find their Territories like the Conquest of *Alexander* divided among their Captains, and that they distributed out as many Sovereignities as they did Titles of Honour, as heretofore in *Spain*, *Sweden*, *France*, and *England*, and at this day in *Germany* and *Poland*.

For this evil that all *Europe* was sensibly affected

affected with, the rigid *North* could invent no better Remedy than such an one as was made use of to extirpate the *Knights Templars*, a general Amputation, as they did in *Sweden* and *Muscovy*, and with us under our King *Durft*. From the time of *Lewis XI. France* began to get *hors de Page*; and what was began in his Days, was perfected by the Cardinals *Richlieu* and *Mazarine*. *England* resum'd her exorbitant Grants, and converted Tenure into Rent; *Spain* compounded the Matter by Marriage Alliances, till their Kings had thereby a general Restauration to their Power. But of the Tyranny of Nobility, and their Insolence to their Kings, scarce any Nation affords more Instances than our own; to hear their many Rebellions and Murders of their Sovereigns, the more frequent Personal Affronts they gave them, would make us think them fit to be ruled only by *Dracos* Laws under a *Durft* a Christian, or a *Basflowitz*. And that King *James VI.* rightly said, *He was not King of Scotland till he got out of it*. And altho' since that time the exorbitant Power of our Nobility have gradually abated; yet there still remains to them many Priviledges inconsistent with the Publick Good, and the Prerogative Royal; as Hereditary Offices of Trust and Power; the Right of holding Courts Criminal and Judicial annexed to their Honours, and the late Power given them over their Burroughs by the Administration of Duke *Lauderdale*; hereby commanding the Lives and Liberties of the Subject, and rendring the whole Kingdom dependant on them. If therefore

fore Resumptions of Crown Grants are so necessary and customary, as in a late Treatise on that Subject we are told; Why need we scruple the resuming such Alienations of the Royal Power so detrimental to the State and Publick-weal? Especially since our own Country furnishes us with so many Precedents of that Nature; that from the Reign of James I. to Charles II. of Great Britain, scarce a Reign has passed without an Act of Revocation, always intimating, that they ought to be made by Act of Parliament; as we see in express Words in the Act of Revocation in the Reign of James IV. — *Mair-atour, We revoke all Regallities or Confirmations of Regality that had na possession of Regality of auld, and all Offices given be us in heritage or be our Father sen the Acts and Statutes made, that na Regallitie nor Office suld be given in heritage without advice and deliberation of the hail Parliament.* And in the sixth Parliament of King James V. holden at Edenburgh, in the Revocation made then by him. Item, *We revoke* *Vid Scotch Statutes.* *all Regalities, and Confirmations of Regalities, and of all Offices given be us in heritage, or be our Father against the Acts and Statutes that na Regality suld be given in heritage without advice and deliberation of the hail Parliament.* Without this customary Practice of one King's resuming the Alienations made by his Predecessour; 'tis certain we had e'er now been reduced to the Model of Poland, the worst Government in Europe, who are never without Ambitious Members enough in their Nobility to push them on to great Enterprizes, and mercenaries enough to

check the prosecution of them, when of how great Concern soever an Act proposed be to the Common-good, if it crosses the Interest or Priviledge of a *Heer Patz*, his Protestation against it is sufficient to make it void; and a single Noble-man's *pas veut*, is of as much force as a *Roy le veut*. And as all wise Kings and brave People have always endeavour'd the retrenchment of that Power in their Nobles so destructive to the common Consent, in making Laws that oblige a whole Nation, and the general and undistinguishable Execution of them: So have they as often and with as good Reason cancell'd their Honours, as resum'd their Priviledges. From the time of the Barons War in *England*, all those that were then guilty of Disloyalty were omitted in the Writs Issued out to the Nobles for their Attendance in Parliament; which the succeeding Kings observing, they only are now accounted Peers of that Realm that are called by the King's Writ; and that any Noble-man whether *English* or Foreigner, taking his Title from a Foreign Prince; altho' Naturalized by Act of Parliament, yet is not accounted a Peer of that Realm unless he be by Writ Summon'd to Parliament. *Guil Herald.* p. 2. p. 16. and with them none were admitted to Peerage of old, that had not thirteen Knights Fees, each Knight's Fee being 20 *l.* a great Estate in those Days. And as we cannot expect an alteration of the Laws of their Land in this Point, so neither ought we to desire it. Nor are they peculiar in making an Estate an essential Qualification to Nobility; for at *Rome* by the *Roscian* Law, 400 Sesterces was requir'd.

required for Admission into the *Equestrian* Order.

*Si quadringentis sex septem millia defunt
Est animustibi, sunt mores & lingua fidesque.*

Plebs eris.

Hor. Ep. l. i.

But for Admission into the Senate, was required 800; and after *Augustus's* time, 1200 *Sesteria*, 24 *Tertilia's* making a *Talent*, a *Talent* worth 187 l. 10 s. *Sterl.* By the *Sulpician* Law no Senator could owe above 2000 Drachms, a Drachm 7d. ob. So that if such Methods are still observed, we must expect of course a great part of our Nobility, that have out-liv'd the Estates they rose by to be excluded the Upper House. Besides, such a numerous Nobility as ours, so disproportionate to the Riches of the Land, either makes it nothing at all as in *Germany*, or divides the People into Tyrants and Slaves, as at this Day in *Poland*, and heretofore in *Sparta*, that knew no degree between *Noble* and *Helot*.

As for the Precedency of those shall be admitted, its already so well settled, and both sides are so well accustomed to, it that nothing but a vain Opinion of the Antiquity of our Families above theirs, can suggest an Alteration; for Sur-names by which Families are distinguish'd, are not above 1000 Years standing in *France*, and that they have many in *England* of longer standing than *William* the Conquerour is certain, and of those that came over with him, a multitude now among them according to *Hollinshead's* Catalogue. Therefore what we find more ancient among us, at least out of the *Highlands*, must be esteem'd

groundless; especially if we consider, as before we observ'd, that our Sir-names were taken from them. And altho' by transferring the Name to the Heirefs, we have a more visible distinction of the Family; yet they can deduce their Pedigrees full as high at least, and a great many that can produce Descents from Barronage, that are now content with the honour and State of Country Gentlemen, and who trouble not their Parliament with those tumultuary Petitions of Claims to their Ancestours Honours, so customary among us almost every Session, nor envy the nice Grandeur of the *Gens de Marque*. And *ut propius spectent Lacrymosa, poemata Puppi*. But with a satisfactory Pride can tell Killebrew's Answer to Prince Rupert's Question; *What was a Country Squire? Why truly* (says he) *somewhat like a German Prince, only a little richer.*

Hcr.

That they may with as much reason as conveniency for perpetuating their Names, take our Custom of making the Honour, Name and Estate inherible by the Female is plain from Natural History; for that *Omne animale fit ex ovo*, is an undoubted Maxime in Nature, *eaq; ova esse Fæminæ propria, maremq; invigoratam tantum vim Principiis vitæ in activis impertire*. So that Inheritance may with reason enough be interchangeable with, if not peculiar to the Sex. And the *Salick Law* is as unnatural as unjust; and the Royal Dignities being descendible on the Daughter in *England, Scotland and Ireland*, and all other *Gothick* Constitutions, except *France*, is as just as an happy Opportunity of Re-uniting the frequent Alienations of Dominion under the ancient *Gothick* Government. If

If then Nobles may degenerate, and 'tis as customary to resume their Privileges and cancell their Honours, as 'tis for them to fall from the Desert that ennobled their Ancestours: Why need we scruple the revoking those Grants they have among us inconsistent with the publick good, since 'tis as well the practice of our own Country, as of the wisest Nations so to do, or at least not to expect their Defects should be retain'd in the new Constitution we are about to erect; and since they have found the abolishing the Payment of Rent in Specie, as was done by their *Hen.* the VIIth, as effectual to raise the value of their Land, as to lessen the immoderate Power of Nobility: Why may not we with as good grounds and hopes of the same Success, do the same thing? When then *England* shall be made sensible of the justice as well as convenience of Female Inheritance, *France* shall unexpectedly feel the united Vengeance of this Isle condemning the Injustice of her *Salick* Laws.

If then our Legislative Body shall be the same, we may reasonably expect to be Rul'd hereafter by the same Laws; but since the effecting it does in great measure depend upon a Reconcilement of those we have hitherto had, and for this many Hundred Years been accustomed to, in appearance wholly different to each other; we shall Treat this Subject as we have hitherto done the former, deducing it from its origine, and tracing it thro' all the Branches of its variety; that we may the more exactly sum up its Homogeneity, cancel what Defects we find, and
leave

leave the remaining Disparity to a reasonable Toleration.

C H A P. IX.

Of an Union of Laws.

LA W is the Motion of Bodies in a progressive Regularity. In inanimate Things, it is the necessary pursuit of the Order impress'd by the First Mover. In Animals of a lower Rank, 'tis the guidance of Sense and Passion, as in the higher 'tis the pruning and refining all our Thoughts and Actions by the Superintendent Correction of right Reason. But as this right Reason is the Perfection of Humane Nature, 'tis not a desultory jump from Sensuality to it; but the product of Time in a successive ennobling our selves from Age to Age, by the Culture of Education, and improv'd Discipline, till we arrive at a Refinement in appearance as high as that our Nature will bear. As Nations therefore are but a Congeries of Singulars, so is their Growth not unlike that of private Men: Thus as the Earth by a fermentative * Contention grew in order, so the Inhabitants of it, from Flocks of † Unthinking Men, by Conquest grew into Government. The first Empire

* *Obstabetq; aliis aliud quia corpore in uno
Frigida pugnabant calidis humentia siccis,
Mollia cum duris sine pondere habentia pondus.*

† *Mollia secura peragebant ocia gentes.* Ovid Met.

they gain'd was over Beasts : then mighty *Nimrod* chased down disobedient Men; but they tamed but one another still, and as yet *res erat unius ætatis populus virorum*; when Woman sooth'd the rugged rage, and charm'd the stroling Forrester into Home and ease and gratefully fetter'd him with the care of a Family. *Astræa* then or Divine *Egeria* Guardian of her of Sex and Society instructing him in Religion and *femine* Virtue, *eo denique ferocem populum redegit ut quod vi, & injuriâ occupaverat imperium Religione & Justitia gubernaret.* Flor. L. 1. C. 2.

So that as Force had determin'd Property, and coutroul'd War; superiour Love establish'd peaceful Reign, and check'd meretorious Bloodshed, and promiscuous Lust: And Marriage became the first Law. Thus *Cecrops* Civilized *Achaia*, and the *Sabine* Leagues the *Romans*. Man thus made sensible of his Duty, and eager to be informed in it farther, pass'd into Axioms all the wise Sayings he could Collect, and into Laws all the Precepts of Justice, the honestly Learned furnished him with; transferring to Posterity their Authors Fame under the Titles of Legislatours great in Renown, as Founders of Empire: Yet either that the Heat was too great to have a sudden abatement, or that it was translated to the opposition they made to the Disturbers of their new acquired Peace, we frequently find Nations in their beginnings ruled by such Sanguinary Laws as those of *Draco*, or the *jus Lubecence*; or that Rulers themselves imperfectly subjected to Vertue, made provisi-
ons

The Union of Scotland.

ons in their Laws for their irregular Lust; like our King *Ewen*. And as the main employment of the Great, in Peace, was Hunting; so we find Forest Laws among the first; nay, of so great Concern was the Game in those Days, that *Hector Boethius*, tells of a bloody War begun between our Ancestours and the *Picts*, for the sake of a Grey-hound.

As Conquest made the first Property, so Valour made the first Desert; and succeeding Peace gave the next to Wisdom, and that both Peace and War might be rightly regulated, the management of this, was committed to the Brave, and the care of that to the Wise; Kings making the one their Companions in the Field, and the other their Counsellors at Home; branching out their Power to these their Nobles, and imparting to them the Vassalage of their Conquered People, whose Service was made agreeable to their Lords Employ, either attending them in their Wars, or providing for the subsistence or enrichment of their Families, by Cultivating the spontaneous product of the Earth, or management of tame Cattel, on which their fierce Masters had now began to feed: Hence Tenure and Feudal Law, which from the establishment they had among the *Longobards*, most suitable to the *Gothick* Constitution, was in their form admitted into almost all the rest of *Europe*, desirous to confirm by wholesome Laws the Settlement they had made by their Arms, not doubting to take Laws from that Nation they would have scorn'd should have given them it,

it; so *Italy* before, of their own accord brought from *Greece* the Laws of the Ten Tables, in the time of the *Decem viri*.

This *Jus Longobardicum* voluntarily submitted to by most of the *European* Kings, and their Nobles, was so agreeable to the Constitution of the Conquering *Germanick* Nations, that it carried with it as voluntary a Submission to it in the People, which flowed into such unforced practice, that 'twas difficult to tell whether it were the immediate dictate of Nature, or the institution of Art; which from its unknown or unperceived Origine was called Custom, with us, and *England* Common-Law.

Yet from the licentiousness of Rulers, the Devotion of their People to their Command, and the natural tendency of uncultivated Nature to Corruption; we see very often enormous Crimes have passed into Custom, and Iniquity thereby Established as a Law; *Communis error*, as my Lord Coke says, *jus facit*, of such sort was the exposing their Children in *Greece* and *Italy*; the Humane Sacrifices of the Ancient *Brittains*, and of the more late *Cannibal Mexicans*, or that general Inversion of the whole State of Vice into Vertue, as we are told from *Baumgarten* of the *Saracens* of *Belbes* in *Egypt*.

As therefore Nations encreased in Numbers and Extent, and their Knowledge in profitable Arts, had produced variety of new Employments, and their Commerce or their Wars had mingled them

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with

*Customs
often bad.*

*All Nations
reform
their bad
Customs.*

with the Affairs of other People, and brought a mutual Acquaintance with each others Laws and form of Government; they saw their own defects, and all but the improvident *Medes* and *Persians*; and haughty *Spartans* abolished their bad Customs, and took Foreign additions to them, or corrected them agreeable to the new Circumstances of State, their fortune threw them into; as the *Romans* took their Maritime Law from the *Rhodians*, after the Confederate War against *Philip* of *Macedon* had brought them acquainted with it; as before they had their Shipping from their Wars with *Carthage*; which Corrections or Additions, when made by noted Men in *Rome*, were called *Responsa Prudentum*, in *England* Reports.

And although right Reason is eternal Truth, and convincing to all Mankind; yet the abstracting it from the mixture of depraved Education, by Interest, or peculiar Temperament of body, is a matter of such difficulty, that we are fain to take for standard truth, what the most and the wisest agree to be so; and that the consent to such Rules may be as universal as the Obedience required to them; what in the *East* were the *Ostroys* of their Kings, among the Frank *Europeans* have been enacted by the Collective body of the People in *Rome*, call'd *Senatus-consulta*, in this Island Acts of Parliament.

That the beginning of our Nation was *The origine*
as barbarous as any, is plain from the *of our*
Quotation Sir George Mackenzie makes use *Laws.*
of, of the *Cannibal Scots*, were seen at *Pa-*
~~ris~~ — *Cannibus vestri humanis*. The first
Reformation our primitive Ferocity had,
was by King *Ewen* the Third: For as for
those Laws attributed to our Kings be-
fore him, they are to be accounted but a
Fabulous imitation of the *Roman History*,
like that of the Story of *Brutus* among our
Neighbours. The next Improvement we
had was from *Kenneth*, Conqueror of the
Picts. But our chief Legislator was *Mal-*
colm Kenmore, who either by his Residence
in the Court of *England*, observing his
Countries Want, or in pursuit of his Feal-
ty, introduced, or renewed, the whole
Form of the *English* Law and Government,
which has continu'd ever since the Sub-
stance of our Common Law; which from
the time of King *James* the First, who in
his Captivity had opportunity of observing
that Custom in *England*, reduced the Com-
mon Law in great measure into Acts of
Parliament; but as we began to consoli-
date our independency, and scorn to be
beholden to the People, we began to
emulate; in the Reign of King *James V.*
We fetch'd our improvements by publick
Acts from beyond the Sea, and with the mo-
del of the Parliament of *Paris*; we added
to our Law the force the Civil-Law had in
the Courts of Judicatory, of most Nations
in *Europe*.

*Vid. Scotch
Statutes.*

The origine
of the Eng-
lish Laws.

The Common Law of *England* is taken from the *Mercian* Law, Compos'd in great part of *Brittish* Customs; from which, the *Danish* Customs in the *East-Angles*, and the *Northumbers*; the *West-Saxon* Law, with those of King *Ælfred*, *Ina*, &c. were formed into one Body, by *Edward* the Elder, about the Year 900; which declining in Practice and Reputation, were revived by *Edward* the Confessor, and since call'd by his Name; to these *William* the Conqueror added the *Norman* Customs, or reinforced what *Danish* ones he found: Hitherto their Statutes were made by their Kings and his Nobles; but after the Barons War, the Commons were call'd to Parliament, and from thenceforth their Laws were enacted by Advice and Consent of the Collective Body of the Land. The Civil-Law is in force in all their Ecclesiastical Courts, the Court of Admiralty, the Court of the Earl-Marshal, and in the Courts of the Chancellours of each University.

The man-
ner of uni-
ting the
Laws of
both Na-
tions.

Since therefore *England* has her Laws, and *Scotland* hers, an Union in this Point must either be by such a Statute as *Poyning's* Act in *Ireland*, enforcing the *English* Law upon us, as it was thereby on the *Irish*; or else by such a Compiement of the Laws of both Nations, as was made of the *Roman* Law under *Justinian*; or else we must be gradually incorporated with them like their Counties *Palatine*, or the Dominion of *Wales*.

Wales. The inconveniencies of the first we have before observed; those that attend the second are the laborious difficulty of the performance, and the danger of making it as imperfect as that of the *Pandects* was; but since we know the failure in that Collection, we are the better prepared to avoid it: What blemishes are in the Composure of the Civil Law, are attributed to the burning all the Books it was taken from, and the Composer's taking but Three of the Ten Years was allowed them, which may easily be provided for, by encreasing the number of those that shall be employed in it; since 'tis not so convenient to lengthen the Time; and by submitting it to publick Censure, by Printing it off before it passes into an Act, like the Laws of the Ten Tables exposed to publick exception in *Rome*, before they were enacted; it may have all the appearances of perfection, and all the opportunities it can have, of being so; and altho' it took up thrice Three Years, the time were well spent; and whereas the Imperial Law consisted of above 2000 Books, the considerable ones that may require a review, will scarce amount to so many Hundreds, in those of both Nations, we may easily expect it should take up less time; and altho' that was but the Laws of one Government, yet they were adapted to such variety of Circumstances, and the governing of so many Nations, that

that the doing it must at least be as much difficulty; especially if we consider that except the Laws of King *Ewen*, in great measure abolished by those of *Kenneth*, our proper Statutes and the Model of the Sessions, our Common Law is already the same, or at least heretofore was.

The common Law of both Nations originally the same.

Which is plain from our Law-terms, as *Flightwite*, *Sok*, *Infangtheift*, *Outfangtheift*, *Hamsoken*, *Theifbote*, *Heriot*, &c. of old Saxon derivation, their Barbarous Latin, *Murdrum*, *Trumbellum*, &c. their Norman, French, *Pipowder*, *Essoin*, *Serjeantry*, &c. with a multitude more, enumerated by my Lord Coke, and that we had all those French-terms from them, and not from France, is certain; for the Law-Language William the Conqueror introduced into England, was not understood by the French he brought over with him, any more than it is by the French of our days, as we see in *Ingulph*, *Abba*, *Croyland*, in *fine Histor.* & *Polyd. Lib. 9.*

We have the same Writs at *Brevia de Recto*, *Affise de Novel*, *Dissefin*, *Replegiare*.

Our Ward-ships and Forrest-Laws agreeing with their *Magna Charta*, and *Charta de Foresta*. We have the same Officers of State, as Chancellour, Keepers of the Great and Privy Seals, &c. The same Ministers of Justice, as Sheriffs, Coroners, &c. The same Titles of Modern Nobility, as the Ancient one of *Thane*: Nay, Courtesie of England, is Courtesie of Scotland. But

to

to put it beyond Controversie, *Regiam Majestatem*, the chief System of our Common-Law, done by Order of our *David* the Third, is but a Transcript, as my Lord *Coke* observes, of that my Lord Chief Justice *Glanvil* made of the Common-Law of *England*, at the command of their *Henry* the First.

Since therefore we took our Common-Law from them, we may with as good Reason take the improvements of their Law; which in my Lord *Coke*'s time, as he says, *had been fined and refined, by an infinite number of Grave and Learned Men; till by long Experience it had grown to such a height of Perfection, that then he thought, Neminem posse esse legibus Sapientiores*: the mixture therefore of such improvements in our Common-Law, according to the example of our Ancestours, must be of as much advantage to the State as their Traffick would be to our Purfes.

We may take our improvements from whence we had our Law.
Inst. P. 1.

And if to the improvement they have made of the Law common to us, both were added, the use we have made of the Civil Law, which furnishes us with what the wisest Men in the greatest State that ever was, could of themselves invent, or learn from all the known World they had for many Hundred Years Affairs with; a composition would result like that of two Brothers improving their Patrimony in separate Stocks to such a height as to equal any private Persons, and afterwards

The general advantage of a composition of the Laws of each Nation.

afterwards to have both Estates devolve on the main Branch of the Family.

And *England*, notwithstanding her unwillingness to acknowledge it, has taken foreign Improvements into her Law, as *Italy* did from *Greece*, and we from them and *France*. For in the Reign of their *Henry* the First, *Vacarius* came over to *England*, and taught the Civil-Law with great Applause at *Oxford*; and from that time to the Reign of *Henry* the Eighth (when it was endowed) it has been publickly taught in their Universities. From the time of *K. Stephen* to that of *Edw.* the Third, the Civil-Law has been in such repute in *Westminster-Hall*, that the Dean of *Paul's*, *Lovell*, *Mansell*, and other Civilians, have been made Lords Chief-Justices; and *Bracton* and others of their greatest Lawyers were so: But the Esteem the Civil Law has always had in the *Chancery*, is undoubted Proof of the regard they have to it. Besides the having a written Rule for interpreting the Common Law, and supplying what Defects it may be found to have, may be an agreeable Confinement to the Judge, and a means to take away that Ambiguity complained of by their People. The bringing into Reputation that Law of such convincing Excellency, that all *Europe* beside, after they had thrown off the *Roman* Yolk, voluntarily submitted themselves to, and the *English* Law has in great measure been improved by, would be a more effectual Means

to preserve the Knowledge of that Noble Science from the Illiterate, than the keeping it in a Language neither *Latin* nor *French*, and peculiar only for its Barbarity.

But if this Alteration should be reckoned too great to be made at once, especially in both Kingdoms, and a more gradual Union should be thought necessary, and that we still should enjoy our ancient Customs unalterably, as *Kent* does her *Gavelkind*, and *Nottingham* their *Borough English* to this Day, and retain the Privilege of enacting By-Laws that opugn not the Laws of the Realm, as many Cities, Corporations, and Companies in *England* do; which not only on account of the *Highland* Government, and some other peculiar Circumstances of our People, we may desire we should; we may thereby be exempt from their Defects, and not be obliged to quit our own Improvements, because they want them, or at least don't think fit to use them; as our Register of Estates, declined by them, for Reasons best known to themselves, and we may thereby escape that pernicious Power they give an illiterate Jury of determining the important Points of Right and Wrong; from whence, and with the customary Power given to Under-Sheriffs (Men generally of mercenary Principles) their Justice is as egregiously perverted, as it has been by their Justices of the Peace trading in their Clerk's Fees.

The Convenience of retaining separate Customs.

The man-
ner of uni-
ting of
Counties
Palati-
nates.

In other Respects our Union may proceed, either as that of the same People, by degrees taking away their seperate Laws and Priviledges, as in the Re-union of Counties-Palatine, the frequent Alienations of Royal Power to Favourites of the ancient *Germanick* Kings of old, when Dominion was of more Value than Money; such as are the Dutchy of *Lancaster*, *Chester*, *Pembroke*, and several other in *England*, and many of the Provinces in *France*, where their Princes had *Jura Regalia*, their Parliaments and Officers of State, and into whose Territories the Writs of the Lord Paramount did not reach; though Ap-
 peals and Writs of Error were appropriated to the *Dominium directum*. In the Reign of *Lewis XI.* these extravagant Grants began to be resumed in *France*; the Power of Palatines in *England*, which had before been considerably lessened, was by *Henry* the Eighth compleatly reduced; making their Chancellors and Lords that had right of Pit and Gallows only Justices of the Peace; sending Commissions of Oyer and *Terminer* under his Great Seal throughout their Dominions; still permitting them their ancient Customs, but taking from them the Power of making Laws: or else as in a Union of Nations wholly different from one another, as that of *Wales* and *England*, *Brittany* and *France*, discountenancing the ancient Language, and such Customs as disagree with the Law, to be intro-

Vid. Coke's
Inst. p. 4.

Of different
Nations.

introduc'd; in the first the Form and Practice of the *English* Law was confirm'd; and to remedy what Inconveniency might arise from this sudden Alteration, a Court was established among them of a President and Counsel, with Prætorian Power, a Court of Equity, as 'tis call'd in *England*. But although such Courts are in appearance a great ease to the People to be united, like the several Parliaments of *France*; and the convenient disposing of the Seat of them, may be of as much use to confound the imaginary Borders, as the restoring the Archbishop of *Tork* to his ancient Jurisdiction, and the uniting the bordering Shires at first intirely, as *Monm. Shropshire* and *Hereford* were; yet we see them taken away in the last Reign, at the Request of the People, as that of the *North of England*, established by *Henry VIII.* and that of the *West* had been before. If therefore such Courts should be declined, or be settled but for a time, Appeals of Matters of considerable difficulty and value can't be more burthensom to the *North of Scotland* than now they are to the most distant Parts of *Ireland*, and the *West-Indies*; where the Liberty of Appeal, notwithstanding their remoteness from the Court, is accounted a great Priviledge.

Besides, the making the Court of the Sessions fix'd after the Model of the Parliaments of *France* is nothing so suitable to the ease of the People, like that Cu-

from in *England* of carrying down into the Country at stated Terms, the Records of their Judicatory, and giving them the conveniency of Tryal at their own Doors; and if the decision of Controversies may be committed to one or two, as 'tis in the Outer-Court of the Session, why can't it be so in the Circuit, or that the whole Court move, as in the Circuits of *Wales*?

As for a mixture of their Ecclesiastical Law with our Commissariot Court, notwithstanding the Commendation given it, and the Reasons made use of by *Jo. Major. de Gort. Scot. Lib. 1. Cap. 6. & Lib. 3. Cap. 6.* For its Introduction among us, we are not like to see any thing of that, Nature while our Church-Government remains in the same State it is now in.

Since then the Law of Nature, the necessary Order of created Beings, the Dictates of Sense and Passion, are as common as Humanity; and that the main Regulations the manners of *Europe* have had, has been from the *Jus Longobardum*, and the *Roman Pandects*, are common to all *Europe*; and as we have submitted to them both, so has *England* to the one, and had her most beneficial Improvements from the other. So that what Diversity remains in the Laws of each Nation, may justly be attributed to real Reasons of State, or the Inadvertency of our Legislators, and the Ambiguity of the Truth in the Authors, they translated their
Model

Model from. As therefore right Reason, Wisdom, tho' a peculiarity of Mankind, is rather a universal Power, than a universal Gift; and the attainment of this our Perfection and Aim, requires industrious Study, attentive Curiosity, various Converse, and laborious Travels, which we have seen even the Princes of the People, from a Queen of *Sheba*, to a Czar of *Muscovy*, undergo: Yet we see a Propensity to such Improvement is as common as Ingenuity. And that all civilized people joyfully take from each other Rules of Wisdom and good Manners. We may then justly reckon this Regulation of the Laws of each Nation, rather a Happiness than a Perplexity; when all the well-stated Laws of both Nations, acquired by distant Travels, and laborious Study, shall be brought to their own Door, and submitted to the Regulation of the wiser Men in both Nations, to insert, correct, or cancel, what shall be judged most beneficial to the Publick Weal, to recieve, discard, or alter.

C H A P. X.

Of a Union of Crowns.

*The Union
to be the Act
of the
State, ab-
solute and
perpetual.*

THat the Union in Royaltymay be last-
ing; that we may not fear the being
revulsed from the Centerwe shall fix on by
forfeited Crowns. and vacant Thrones;
that our Union may hold, though our
Kingdoms were Elective, like that of the
Sweeds and *Goths* under *Olaus*, or that of
Norway and *Denmark* under *Christian* the
First; that it may not be made the Sub-
ject of future Dispute, like the Homage of
our Kings, it must be absolute, and perpe-
tual; the Act of the State like that of *Pol-
land* and *Lithuania* at the Diet of *Lublin*;
and as far as may be the Action of the Bo-
dy of the People, like the Homage our
Ancestors paid to *Edward* the First of *Eng-
land*; like the Adventure of *William* the
Norman Conqueror, cutting off all hopes
of a Retreat; and as he burnt his Ships,
so should we destroy all that may suggest
the least expectation of Separation: For
in this Case an After-thought is of as dan-
gerous consequence as a want of Thought
is before; and Repentance here is as useless
as After-marriage; If it be not compleat
enough to take all fear of future Rupture,
and

and thereby give a Communication of Priviledges, 'twill be neither safe for them, nor of any considerable benefit to us. Not that we ought to Surrender at Discretion, and give our selves up to be managed as they think fit; but that our Concessions, which should be such as may take off all hopes of a Retreat, and at the same time give them proof that we never designed any, may be made the Terms of Union.

If the enlargement of Power is as much the business of our State as 'tis of all others; if a separation from the Union we already have with *England*, is impracticable; if the making it closer, is the tendency of our Constitution, and the true center of our Greatness; the making the Coalition intire, the Incorporation natural and lasting, ought to be as much our Aim as 'tis our Interest.

Scotland then forget your Emulation, forget your Name, Cancel the imaginary bounds of each Kingdom; and as our Constitutions and Customs, shews us plainly to be originally the same People; let us no more scruple the calling our selves *English*, than we do the calling our Language so, in any part beyond the Sea.

Since the mischievous Consequence of Translating the Imperial Seat from *Rome* to *Constantinople*; the fatal Instance of the removal of ours into *England*, and the Travels of the late King; has made our Neighbours so apprehensive that the like practices

Difference of Name to be Cancelled.

The course of Empire not to be diverted.

practices may produce the like effects, as to have prevented such removals of the Court for the future, by special Act of Parliament : That the growth of Empire therefore may not be hereby diverted or rendred uncertain ; we must not only quit all thoughts of the Project in the Union of the Three *Northern* Crowns, of a Reciprocal residence of our Sovereign in each Kingdom ; but expect for that Reason, and our Propinquity to the *English* Plantations, our Trade thither should be burthened like the *Irish*, and that we like them should be obliged to touch in their Ports.

Since then we must bid an adieu to the Royal Presence among us, and it shall reside only with us in a benign influence : *Scotland* lament not your deserted Palaces, ancient Seats of Kings ; lament not the Scepter departing from you ; but surrender with flying Colours your Maiden Castle, and her Maiden Treasure, Crown, Scepter and Ball, with those other sacred Emblems of the Vertues that adorn Majesty Supreme in Peace, and Triumphant in War ; Rejoyce as a Bride at a great Match, as Obtained, not Subdued ; as a Companion, not a Captive ; your Crown not torn from you, but delivered ; not a Spoil, but an Offering ; not a Trophy, but to become a distinguishable Noble part in the Imperial Crown of *England* : and if the Seven Kingdoms we comprehend,
the

the Heptarchy of *England*, the Five Kingdoms of *Ireland*, the Triumph of their Second *Henry*; *Wales* the Triumph of *Edward* the First; *France* the Right and Triumph of *Edward* the Third, and *Henry* the Fifth were represented in it by so many Gems, they might compose an Union of Triumphant, adorning Bright *Anna's* Brow, with Emblematick Rays of that Union of Blood-Royal that flows in Her Veins. For since the *Irish* Stock, preserved in our uncultivated *Highlands*, like precious Seeds in unfrequented Forests, has been inserted into the Royal Line of this Island; our Kings are now become as Rightfully, as their Predecessours were Triumphantly Kings of Great *Brittain* and *Ireland*; having their Sovereignty thereby rendred as difficult to be questioned as disobey'd: This is a blessing we owe to the Power of *England*, that a blessing they owe to the Fortune of *Scotland*.

But to make our Nations willingly what they really are, the same Family, and Consummate the Marriage of all that is Alien among us; to give us a perpetual Intestine Peace; to fix us in a voluntary uniformity in Religion, Law, Interest and Affection, is an Atchievement, scarce to be expected from a less Power, than that first charmed rude Mankind into Peace, and taught him Justice and Religion: To such, or some secret influence

in the *Danish* Royal Line, may justly be attributed, the most celebrated Union of different Nations we ever yet heard of; that under the Mighty *Margaret* of *Denmark*: So that howsoever unsuccessful the Attempts of our Kings have hitherto been to unite us, we may deservedly account it a peculiar blessing reserved to this Auspicious Reign to accomplish; where a *Danish* influence meets in the Greatest Empress of the World, forbodeing a happy Issue of this her Enterprize; peaceful as her Sex, and great as her Soul. Such is the Mighty Empire of Love, ruling the greatest Kings, and reaching even Heaven it self; such was the spacious Power of the August *Margaret*, where Three of the most Warlike Nations in the World courted a Subjection to her, as in *Mild Peru*, where subjection was made a Choice, and command a Favour, yet as severe in Punishment as munificent in Reward, with as much of the Bravery, as Wisdom of *Pallas*. Such *Brittannia* was, such *Amia* is; surpassing her Sex, as much as they do Mankind in Vertue and Devotion; and her Country in Generosity, as much as they do the Patrimonious Continent; and as Generosity in the Court, is Bravery in the Field, and Piety at the Altar, *Equanimity* in Command, so see we her Magnificently moderating the times of Peace and War, with the force of Fortitude, and and the Candour of Holiness.

Hieroglyphicks

Hieroglyphicks were Expressions of Thought more Ancient than Letters, and Fables, as my Lord *Bacon* observes, than Argument: Hence we find the Ancients frequently giving us sensible Descriptions of their unspeakable Conceptions, by such shades, Painting their obscure Ideas of Deity, and by such Parables, delivering to us the Notions they had of Futurity: Thus we see them describing *Britannia* on the Coins of *Antoninus*, holding in Balance Peace and War, either seated on a Rock in the midst of the Sea, or on a Globe o're the Ocean, in each Hand, wearing her Shield by her side; to which Emblem of their Heathen Ancestours, *Christian Rome* added a Guardian Saint.

No longer now let's wonder at the Prophetick Type; our Days have revealed the Mystery, and converted the Emblem into reality; *Jam accepit fabula prisca fidem*: Now in reality we see Illustrious *Anna* ballancing the Powers of the Earth, moderating universal Peace and War; ruling o'er the Globe, as She Rules o'er the Sea, placed in the fatal Chair, Rocky Seat of everlasting Empire; and if *Britannia* had for her Guardian *George* her Saint, *Anna* has taken to her side *George* her Hero. *George*, that with armed Hand and Heart of triple Brass, in heat of Battle, from midst of Valiant *Swedes*, rescued a Brother and a King.

Since then *Britannia's* Seat is fix'd
 by your more Potent Rival, who has
 placed on her Head an Imperial Diadem,
 by the Conquest of *France*, as *Germany*
 owes her Eagles to the *Roman* overthrow,
 and since She has espoused the Guardian
 Genius of *England*: *Scotland* forget your
 Envy, check no longer the growth of
 her Empire, as you have hitherto detract-
 ed from her Fame, be no longer an Alien
 in your own Family; resist no longer the
 Decrees of Heaven and your Fate: For this
 Union Illustrious *Anna's* Reign assures you
 shall be; the removal of the fatal Chair,
si mens non lava fuisset; long since foretold
 you would be: The Ark of the Cove-
 nant, in *Israel*; the *Ancile*, and *Palladium*
 of *Rome*; the *Ampulla* of Holy Oyl in
France: Howsoever Fabulous their Mis-
 sion, and insignificant their Influence may
 be accounted by the Prophane; howso-
 ever Superstitious the Veneration paid to
 them, may be reckon'd by the more Learn-
 ed and less Devout Age we live in; they
 were always esteemed by the most Pious,
 the most Brave, the most Wise; in Holy
Canaan, Martial *Rome*, and Lofty *France*:
 God with them abating in Benediction, as
 they in their Faith; *Secreta imperii pignora*,
 vanishing like neglected vestal Flame;
 Seals of Divine Commission, void when
 lost; inseparable Adjuncts of Empire an-
 nexed to their Glory, Prophetically, Fa-
 tally, Providentially.

Flor. Lib.
 1. Cap. 2.

When

When then vain Hopes and heedless Tenacity, shall no more divert us from our true Interest; when ours and *England's* greatness shall be reckon'd the same; when Religious *Chicanry* shall leave our Isle; when Vertue shall become more than an *inane nomen*, and Honour a reality; when Honesty, tho' in obscurity shall be accounted beyond the vain Pomp of the great Vulgar without it, or a Grandeur great as that of *Sejanus* rais'd by Bribery and Plunder of the publick Treasure; when inconstancy shall leave the Great, and vicious Infidelity the Small; and the greatness of Empire shall be more regarded than the greatness of a Party: Then shall *Scotland* esteem an Union with *England* their greatest Happiness, then shall *England* esteem an Union with *Scotland*, substantial greatness; then shall they see, that false *Scot* is an ill Translation of *Le fidelle Eccossois*; then shall they see that tho' we can Fight them as Enemies, we can Love them as Brothers; and be as sincere in Affection, as brave in the Contention; then shall *Anna* be served like *Lewis*, with *Scavola & Reguli*, valuing their Countries Honour as their own, and their own beyond their Blood; then shall She fix an Empire in the Deep, greater than all the Rapacious Conquests of the Continent; vast as the Ocean, and lasting as her Fame.

And since 'tis not to be imagined, that so Great and Wise a Nation as *England*, should

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should be so unmindful of her future Safety, or insensible of the Advantage of securing to her Interest so great a People as make the half of their Armies, and near a third of their Fleets, as to reject reasonable Proposals of an Union; or like the unthinking haughty *Spaniards*, with contemptible Scoffs, urge into Despair the People they might have ruled by fairer means, as they did the *Geuxes* of the *Netherlands*: Or that they can be unaware how dangerous the Power of a Commissioner, may one day prove, if we consider, that besides the Subversion of the *Assyrian* Empire by the Governours of Provinces, and the great Revolutions made in the *Roman* State by *Marius*, *Scylla*, *Pompey*, *Cæsar*, who from Governours of Provinces and Generals of Armies, set themselves at the Head of the State, and at length o'erthrew the whole Constitution. But Recent Memory, and our own Isle, furnishes us with a remarkable Instance of that nature in General *Monk*, who from a Lord Lieutenant of *Scotland* made a Revolution in the three Kingdoms. Although this Revolt was on the right side, yet the House of *Bourbon*, as well as that of the Great *Cyrus*, have thought fit we see to clip the Power they rose by.

But if Vanity and Opiniatritie must still rule our Land, and the Fault be laid on our side, and like improvident vain *Capua*, we shall imagine the Straits of our
Allies

Allies to be greater than they really are, over-look their Strength, and so far anticipate the Success of our ill-grounded Hopes, as to insist on great and intolerable Demands as a Reward of our Alliance, we may expect a *Capuan* Fate.

Capua, one of the chief of the *Roman* Allies in *Italy*, great in Power, but greater in her Pride, enjoyed her own Laws and Senatorian Government; but being debarred some Privileges of *Roman* Citizens, and reckoning their Alliance to be disproportionate, long sought an Opportunity of discovering their Resentment by a general Revolt, which the perplexity of the *Roman* Affairs upon the Victories of *Hannibal*, in appearance gave them. *Magius Decius* a Senator, advised them rather to make use of this Opportunity of deserving a firmer Friendship with the *Roman* State; but on the contrary, at the instigation of *Pacuvius*, another of their Senate, they send the *Romans* Word, unless they will grant them all the Privileges of *Roman* Citizens, and make one of their Consuls a *Capuan*, with such other Demands as they were sure the *Romans* would not consent to but upon constraint; which if not complied with, they threaten to joyn themselves to *Hannibal*. But the *Romans*, with their usual Bravery, scorn'd to acknowledge such a necessity of their Alliance, and threw off their Proposals. Whereupon they submit

to

to *Hannibal*, who promises to make their City the Metropolis of *Italy*, and that even the *Romans* themselves should receive their Law and Justice there; he then accepts their Treachery, but soundly punishes their Sin, subverts their Laws, arbitrarily executes their Citizens, and Garrisons their City. Then too late made sensible of their Mistake, they court the *Roman* Pardon and Assistance; but they reject their Petition with the same Scorn they did their Proposal, and return'd their Answer by an Army sent against them, under their Prætor *Fulvius*, who lays Siege to their City. Then in vain they call upon the Assistance of *Hannibal*; in vain they court the *Roman* Pardon, 'till the Senate, tir'd with Importunity, at last sent one to their General; but he refused to read it, and put it in his Pocket 'till he had storm'd the Town, and destroy'd all those of their chief Citizens that were not their own Executioners. After which their Country was made a Province, without Senate or Magistrate of their own, but ruled by an Annual Governour sent from *Rome*.

Some

*Some Brief Heads of the Papers
deliver'd by the Commissioners
of Scotland to the Commissio-
ners of England.*

WHereas his Majesty's Subjects of *Scotland*, born under the Allegiance of the King since the happy Succession of King *James* to the Crown of *England*, are so far from being Aliens, that they are declared to have by the Law of this Kingdom, All the Priviledges of natural born Subjects of *England*. And whereas his Majesty's Subjects of *Scotland* have enjoyed a free Trade here in *England*, and in all the Dominions and Plantations belonging to the Kingdom of *England*, more than 56 Years, without any considerable Obstruction all that time: Yet since the 25th of *March* in the twelfth Year of his Majesty's Reign, by some Acts of Parliament here in *England*, the King's Subjects of *Scotland* are clearly debarred from the Priviledges granted to all his Majesty's other Subjects: Seeing by those Acts the Priviledges are granted to such Ships or Vessels as do truly belong only to the People of *England* or Dominion of *Wales*, &c.

In order to the removing all Obstructions of the Freedom and Liberty of Trade between the two Kingdoms: To the end the People of *Scotland* may be encouraged to Trade here as formerly, and to export from this Kingdom such Foreign and other Commodities as are necessary for them (which we conceive to be a great Advantage to this Kingdom, the Exported Commodities far exceeding those Imported hither) for encouraging the Shipping and Seamen of *Scotland*; without which the Trade cannot be continued, and for removal of the Trade of *Scotland* into Foreign Parts, which would be very prejudicial to his Majesty's Customs in this Kingdom, (as we conceive) and to the happy Union and Correspondency of the two Kingdoms, which we above all things endeavour to preserve. We begin with that which is first in time, and indeed of greatest Importance to *Scotland*; An Act intituled, *An Act for encouraging and encreasing of Shipping and Navigation.*

I. That as to the Trade with the Lands, Islands, Plantations or Territories to his Majesty belonging, or in his possession, or which may be hereafter belonging or be in the possession of his Majesty, his Heirs or Successors, in *Asia*, *Africa*, or *America*; The same Freedom may be allowed to such Ships and Vessels as do truly, and without Fraud, belong only to the People of *Scotland*, whereof the Master and this are

Scotch

Scotchmen, &c. as are allowed to his Majesty's Subjects of *Ireland*, Domini-
on of *Wales*, and Town of *Berwick upon*
Tweed.

II. That it be declared, That his Ma-
jects of *Scotland* are not meant to be de-
barred in that Clause, debarring Aliens or
Persons not born within the Allegiance
of our Sovereign Lord the King, &c.

III. That the Ships or Vessels belong-
ing to his Majesty's Subjects of *Scotland*,
navigated as before exprest, and fraughted
only by his Majesty's Subjects, may be de-
clar'd to have Liberty to bring into *England*,
the Goods and Commodities that are of Fo-
reign Growth, Production or Manufacture,
under the same Restrictions and Limitati-
ons as are expressed for the Ships of *England*.
This was freely practised ever since King
James came into *England*, and is of ab-
solute necessity for maintaining the Ship-
ping of *Scotland*, and keeping the Seamen
here for his Majesty's Service, and will be
an Increase to his Majesty's Customs.

IV. That all other Priviledges granted
by this Act to the Ships and Vessels belong-
ing truly to the Subjects of *Ireland*, *Wales*,
and Town of *Berwick*, may be also declar'd
to belong to the Ships or Vessels truly be-
longing to the Subjects of *Scotland*, naviga-
ted as aforesaid, &c. And to be declared,
that the Penalties imposed upon Aliens, by
this Act, that the Subjects of *Scotland* are
in ways therein concerned.

V. That whereas almost all the Ships, &c. belonging to his Majesty's Subjects of *Scotl.* during the late Usurpation, were taken and burnt, &c. We desire, that all Vessels taken from the King's Enemies, and condemn'd as lawful Prize, may be declared Naturaliz'd, &c. And that they may be declared capable of Free Trade here, as if they had been built within his Majesty's Dominions: A List of such Ships being entred betwixt, and a Day to be agreed upon into the Custom-House Books here. *Provided*, That it shall not be lawful for *Scotsmen* to trade here with any Foreign-built Ships to be brought hereafter, but only with such Ships as are built in *Scotland*, or some other of his Majesty's Dominions. And that both the Prize-Ships, and other Ships here in the possession of the Subjects of *Scotland*, navigated by 3 parts of 4 *Scotsmen* or other his Majesty's Subjects, and fraughted only by his Majesty's Subjects.

VI. And whereas it may be suspected That in demanding such a Trade with the Plantations, as allowed to the Subjects of *Ireland*, may prejudice his Majesty's Customs here, or destroy the Ends of the Act of Navigation as to those Commodities: We declare, That we are willing to treat and conclude with your Lordships upon such Assurances as can be reasonably demanded. That none of those Commodities shall be transported in *Scots* Ships; but that they shall be brought into such Ports of *England*

as shall be agreed upon, excepting only such a small Number for the Consumption of *Scotland*, as shall be agreed upon between your Lordships and us.

January 21. 1667.

*Some brief Heads of the second Paper,
delivered by the Scots Commissioners.*

IN Answer to a Paper of the first of February, in Answer to ours, of the 21st of January, &c. We will be so far from formalizing in a business of such Concernment: So when your Lordships shall consider the Dates of our Papers, we hope you will find that we have not been the Cause of any loss of time, &c.

By your Lordships first Paper, you desire to have the whole in prospect; and we did conceive, you had in our first Paper, &c. Yet seeing your Lordships do still insist, that we should first declare more particularly what we have further to propose, and give you a Scheme of the whole.

In Compliance with this, we do represent, That we do expect your Lordships will Consent to the restoring his Majesties Subjects of *Scotland*, to the same freedom of Trade here in *England*, and the Dominions thereunto belonging, which they enjoyed during the happy Reign of his Majesties

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Majesties Royal Grandfather, and Father of blessed Memory. And for that purpose to the Repealing all the Clauses of the Acts of Parliament here in *England*, which destroy or obstruct that Freedom: We have fully expressed our selves, as to the first and greatest Obstruction.

I. The Act of Navigation, And we now mention further, The Act for encreasing of Trade, 15 *Car. 2. Cap. 7.* And in it the Imposition on *Scots-Cattle*, from the 24th of *August*, unto the 20th of *December*. And what in the Act may be interpreted to concern the Subjects of *Scotland*, as to their Importation of fresh, and salted or dried Fish, which last Clause depends in part upon the Act of Navigation.

II. An Additional Duty laid on *Scotch Linnen-Cloth*, in the Act of Tunnage and Poundage, in the 12th Year of his Majesties Reign, being one full Moiety more than is mentioned in the Book of Rates

III. That part of the Act 14. *Car. 2. Cap. 7.* which forbids the carrying of Skins, or Hides Tann'd, or Untann'd into *Scotland*.

IV. That part of the Act for preventing Frauds and Abuses in his Majesties Customs, 14. *Car. 2. Cap. 7.* which obliges all Goods, and Wares that shall be brought out, or carried into the Kingdom of *Scotland*, to pass in or through the Towns of *Berwick* and *Carlisle*; at least we shall desire an Explanation of the same.

V. The

V. The Imposition laid upon *Scotch-Salt*, above 16 times more than that of Foreign Salt. 14. *Car. 2. Cap. 11.*

VI. The Imposition laid upon *Scots Beer*, (*viz.*) 10 s. per Barrel, as if *Scots-Men* were Foreigners

VII. And we further Expect, That where Forreigners, or places beyond the Seas are mentioned in any Act, That it be declared, That his Majesties Subjects of *Scotland*, nor his Kingdom of *Scotland* are not meant, nor cannot be so understood to be meant.

VIII. As concerning the unusual Customs imposed lately in *Northumberland*, and *Cumberland*; we mean, that of late there hath been demanded for every Stone-Horse into *Scotland*, 3 l. 6 s. 8 d. for every Gelding 1 l. for every Mare 6 l. 6 s. 8 d. for every Quarter of Wheat carried by Land 5 s. 4 d. of Pease 4 s. of Bigg and Barley 2 s. 8 d. and of Oats 1 s. 4 d. upon a pretence of the Acts made in the 13th and 15th Years of his Majesties Reign. And without any Colour of Law, new Imposts (as we are informed) are laid upon *Northumberland* Coals carried into *Scotland*; and unusual Customs upon ordinary Commodities brought every Market-day into *Berwick*.

Thus your Lordships have the full Scheme of all that is to be demanded by us in this Treaty; but because what we have given in, relating to the Act of Navigation was the first in time, and is the greatest Obstruction of our Trade; And indeed

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indeed without which our Trade cannot be carried on here: We still insist upon an Answer to it in the first place: And then we shall willingly proceed to all the rest in order: And we hope it shall appear we do, and shall desire nothing but the Just and Reasonable removal of the Obstructions of the Freedom of Trade, so long enjoyed, and the continuing and strengthening the happy Agreement of both Kingdoms, which is our greatest desire, and shall be pursued by us most heartily and dilligently.

*February 3.
1667.*

By Order of the Commissioners for the Kingdom of Scotland.

John Donn.

Answers to the Papers of the Scots Commissioners.

WE have consider'd of your Lordships Paper of the 3d of February last, signed by your Order *Jo. Donn.* And before we return any Answer to the Particulars therein mentioned, or in your former Paper: We hold our selves obliged in the first place to take notice, That both in that, and in your former Paper, you do affirm, and insist upon it, as if the Act
for

for Navigation, and some other Acts made since 1660. were matter of Injury and Wrong to *Scotland*: And (as you say in the aforesaid Paper of the 3d of *February*) contrary to the Priviledges that do belong to his Majesty's Subjects of *Scotland*, born under the Allegiance of the King: Which if so, there is no room or place for Debate, but the Kingdom is under an absolute Obligation and Tye, that all the said Laws be annull'd and abrogated. And therefore we do desire, That your Lordships would be pleased to shew us how you do found, and can make good this Assertion. And in the mean time we say, That tho' the Kingdoms of *England* and *Scotland* are under one King, yet that we conceive the Kingdoms themselves to be wholly free to make such Laws in point of Trade and Commerce, as they each of them conceive to be for their Good and Conveniency. And that we know no Priviledge belonging to the People of *Scotland* taken away by the said Laws. And that the Overtures which we shall make unto you with relation to any of the said Laws, we do not make them as things which we are obliged to grant unto you in point of Right, but only upon consideration of Prudence and Conveniency, and for the increase of mutual Correspondency and Kindness between the People of both Kingdoms: And upon presumption and confidence, That Priviledges, Immunities and Advan-

tages shall also be granted by the Treaty to the People of this Kingdom trading into *Scotland*. And we do not find in the Articles of Union, which were signed by the Commissioners of both Kingdoms in the Reign of King *James* of blessed Memory, That there was any insisting upon, or mention of Right on either side: But that they proceeded on such Grounds as we do now go upon. And if we should put your Lordships in mind of Propositions made by the Kingdom of *Scotland* in *Anno* 1660. we suppose, you would easily agree, they were of a much transcending Nature to any thing that hath been enacted or propounded by this Kingdom in relation to the Kingdom of *Scotland*. And as to what your Lordships do hint of the usage and freedom of Trade enjoyed by the People of *Scotland* here for so many Years, we shall only mind your Lordships, That as by the ancient Laws of this Kingdom, the Importing Cattle out of *Scotland* into *England* was prohibited, so by the Articles of Union, it was in express Terms forbidden to carry Wool, Sheep, Wooll-fells, Cattle, Leather, Hides, and Linnen-yarn, out of either Kingdom into other. Yet the practice as to several of those Commodities hath varied since that time. And on the other Hand for the encouragement of the Trade of making White Salt in *England*. That the importing of Salt out of *Scotland* into
England

England was restrained by Act of State, even in King James his time. And we are informed that the like Restrictions have been put upon the *Baltick Trade*. And we find in the Articles of Union (upon occasion of some of the abovemention'd and other Restrictions of Trade) this Expression, *viz. All which Restrictions and Exceptions beforemention'd, are not to be understood or meant in any sort for any Mark or Note of Separation or Division, but only as Matters of Policy and Conveniency for the several State of each Country*. And upon this occasion it may not be amiss to observe unto your Lordships, That the seven United Provinces (though united as they are, yet) in relation to Trade) they do, each of them, as they find to be for their particular Good, impose Restrictions and high Customs upon the Commodities coming thereinto out of any of the other of, the said Provinces.

In the next place, we cannot but take notice, That in your Lordships Paper of the 3d of February we find this Clause, *That your Lordships do expect, we will consent to the restoring his Majesty's Subjects of Scotland to the same Freedom of Trade here in England and the Dominions thereunto belonging, which they enjoyed during the happy Reign of his Majesty's Royal Grandfather and Father of Blessed Memory*: Which were at once to take away all Incorporations which have been made since the beginning of

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King *James*, either in relation to Home or Foreign Trade: And then neither Cattel, nor Sheep, nor Leather, nor several other Commodities must pass out of either of these Kingdoms into the other: which whether it would be for the advantage of *Scotland*, we leave to your Lordships Consideration.

And as to the Acts for Navigation and Trade, and several other Laws: If the Subjects of *Scotland* are to have the Priviledges they had in King *James's* time, then they are not only to have the Priviledges of those Acts, but to be free from the Limitations and Restrictions put upon the *English* by them: And consequently they are to have much greater Priviledges in *England* in relation to Trade and Navigation than *Englishmen* themselves: and have premised these Generals as to what your Lordships do desire concerning the Act for encouraging and encreasing of Shipping and Navigation in the several Particulars mentioned in your Paper of the 21st of *January* last, we answer as follows.

To the first, Concerning the Trade with his Majesties Plantations in *Asia*, *Africa* and *America*; That as to *Tangier*, the Scots have at this Day liberty of trading thither: And as to his Majesties Plantations in the *East-Indies*, and upon the Coasts of *Africa*, and several in the *West-Indies*; that they do belong to particular Companies and Corporations of *English-Men*, and no other
English

English have any Right of trading thither. And as to the rest of his Majesties Plantations in *America*, That they were found out, possessed, planted and built by the Labour, Blood and vast Expence of his Majesties Subjects of the Kingdom of *England*. And therefore it cannot be reasonably expected, that *Scotland* should reap the Benefit thereof. And your Lordships do know very well, That when *Portugal* was under the Crown of *Spain*, yet, that neither the *Portugal* Ships, nor the Shipping of *Flanders*, or of several other Countries, under the Crown of *Spain* traded to the *Spanish West-Indies*; nor could any Shipping of *Spain*, excepting those that belonged to *Portugal*, Trade to the *East-Indies* or *Africa*. And you also know, That in the United Provinces, it is not permitted to any Shipping, but those that belong to their *East-India* Company to Trade to the *East-Indies*; nor to any but those that belong to their *West-India* Company to Trade to their Collonies in *Africa*, or the *West-Indies*. And his Majesties Subjects of *England*, would have very little Encouragement to Hazard and Expend their Lives and Fortunes in the settling of Collonies, if (when done) others should go away with the Benefit thereof. And therefore, That we cannot allow, that the Ships and Vessels of *Scotland* be permitted this Trade.

To the second we are Content, That his Majesties Subjects of *Scotland* be not d

barr'd from Exercising the Trade or Occupation of Merchants, or Factors in any of the Islands, Plantations, or Territories to his Majesty belonging, or in his possession, or which may hereafter belong unto, or be in the possession of his Majesty, in *Asia*, *Africa*, or *America*; but that they be permitted to Plant, or be Merchants, or exercise any other Occupation there, as freely as any *English*-Man.

To the third, concerning the Shipping of *Scotland* having Liberty to bring into *England* the Goods and Commodities that are of Foreign Growth, Production or Manufacture; we Answer,

That we can by no means consent to this desire. For that it would be too great a Blow to the Navigation of this Kingdom. Besides, the Kingdom of *Scotland* being wholly Independent of it self, and not Subject to the Crown of *England*, we cannot have reasonable Security and Satisfaction; that the said Kingdom will keep up, and tie its self up to the strict Observation of the Restrictions and Limitations set down in the Act for Navigation, with relation to this matter; and it would be mischievous to this Kingdom, if the Kingdom of *Scotland* should enjoy the Liberties and Priviledges of the said Act, with relation to this Article; and yet by connivance or otherways should not be kept up to the strict observance of the Rules and Limitations there-

And

with England.

And for what your Lordships say, That this was freely practiced ever since King *James* came into *England*; This Argument hath been already answered. Besides, The making of Acts for Navigation in this Kingdom is no new thing. They have in all Ages made them, sometimes of one kind, sometimes of another, as Trade hath varied and the necessity of the time called for.

And whereas your Lordships do in several places give hints at *Ireland*, and seem to make it a ground, why this and other Priviledges should be granted to *Scotland*, because granted to *Ireland*.

The Answer is most clear and obvious, (*viz.*) That *Ireland* is only under our King with us, as *Scotland*, but belongs unto us, is an Appendix of the Crown of *England*; and Laws made in the Parliament of *England* bind them; And no Law can be Enacted by the Parliament of *Ireland*, but what passeth the Privy Council of *England*, and Orders of the Council of *England*, and the Great Seal of *England* do take place in *Ireland*; Yea, the Treasurer and other great Officers of State in *England* have Jurisdiction and Superintendency in *Ireland*. By all which it is absolutely in our Power when we grant Priviledges to them, to compel and keep them up to the Restrictions and Limitations of them. All which is quite otherwise in relation to *Scotland*.

And

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And for what you say, That this is of absolute necessity for entertaining the Shipping of *Scotland*, and keeping the Seamen there for his Majesty's Service: We Answer,

That the contrary is of as absolute necessity for encouraging the Shipping of *England*, and keeping the Seamen here for his Majesty's Service. And we think; That the being of here, where his Majesty's Navy Royal is, of the two, is the more necessary. And it is notorious, That there are Seamen enough in *England* to drive the Trade hereof, as the Law now stands; and consequently the making so great an alteration therein, must be proportionably to diminish the Number of them, to what they are by this alteration to be augmented in *Scotland*. Nor do we understand, how there will be any Augmentation to his Majesty's Customs by this Alteration.

But yet to shew our willingness to comply with your Lordships, as much as is possible; we do offer as to this Head.

I. That all Shipping belonging truly to his Majesty's Subjects of *Scotland*, Navigated with a Master, and 3th parts of the Seamen of his Majesty's Subjects may have the Liberty of Importing Fish, and Fish-Oyl of their own taking, and serving into *England*, according to the Priviledge granted them in the Act for Navigation.

II. That

with England.

II. That the said Ships or Vessels Navigated as aforesaid, and fraughted only by his Majesty's Subjects, shall for the term of Six Years next ensuing his Majesty's Ratification of this Treaty; have Liberty to Import into *England*, Salt, (not of *Scottish* making) reserving the business concerning *Scottish*-Salt to another Article hereafter, to be given your Lordships upon that particular) Pitch, Tarr, Rosin, Hemp or Flax, Raisons, Figgs, Prunes, Olive-Oyl, or Spirits called *Aqua Vita*, or Brandy-Wine, Sugars, Pot-Ashes, Wines, Vinegars, and all sorts of Commodities, of the Growth, Production, or Manufacture of any of the Countries, Islands, Dominions, or Territories to *Muscovy*, or the *Ottoman*, or *Turkish* Empire belonging, from the same places from which the same may now be Imported, and paying such Customs and Duties as are to be paid for the said Goods, if Imported in the Shipping of those respective Countries.

And in regard of the great want of Timber and Boards, for the rebuilding of the City of *London*, and being desirous to gratifie the *Scottish* Nation in whatsoever is possible for us to do: And that they, rather than any other Nation, should reap Benefit thereby: We offer,

That they may Import into *England*, such Shipping, and Navigated as for the said term of Six Years,

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all sorts of Timber and Boards from *Norway* and elsewhere; paying for the said Goods during the said time, no other Customs or Duties, than are paid by *English*-Men in *English* Shipping. And after the Expiration of the said time, such Customs and Duties as shall be paid by the Shipping of those Countries, from which the same are Imported. To which Customs and Duties *English*-Men themselves are subjected, if they Import the said Goods in any other than *English* Shipping, for the prevention of the defrauding of his Majesty of his Dues.

III. We offer, That the said Shipping of *Scotland*, navigated and fraughted as aforesaid, may for the said term of six Years ship out of *England*, all such Commodities as may be shipped out in *English* Shipping, under the same Customs and Duties as are paid by *English* Shipping, and no otherwise.

As to the 4th Article, the first part thereof consists only in Generals, and so is answer'd in the particular Answers to the other Heads.

And as to what your Lordships desire concerning the Recture of Goods from Port to Port in *England*, We answer to this as to the third Article, and moreover, that the carrying Goods from Port to Port in *England* in any other than *English* Shipping, is prohibited by another ancient Law for Navigation, as well

with England.

in the 12th Year of his Majesty's
Reign.

And as to what you further desire,
that it be declared, That all other Penal-
ties imposed upon Aliens by this Act, do
no ways concern the Subjects of *Scotland*,
we answer :

That this is to ask more for the Subjects
Scotland than the Subjects of *England*
do enjoy : For that, by the said Act, *En-
glishmen* themselves, in some Cases, are to
pay Aliens Duties.

As to the 5th, We did some time since
desire, That your Lordships would fur-
nish us with a List of Foreign-built and
other Shipping. And we do hereby re-
new that our Desire, and that we may
have it with all speed. And we do offer,
that such of them as are of Foreign-built
shall, during the said Term of six Years a-
bove-mentioned, enjoy the same
down in the Articles.
answer to the said He
the

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Scotland, and such they shall buy of English Built, and no other.

And thus according to the Method propounded by your Lordships, you have in the first place our Answer to that, which you are pleased to call the greatest Obstruction of Trade between the two Kingdoms, *The Act for Navigation*. And we shall be ready, when we have your Lordships Answer to this, to proceed to the rest in Order.

March 16. 1667.

F I N I S

WISEMEN

Reverend